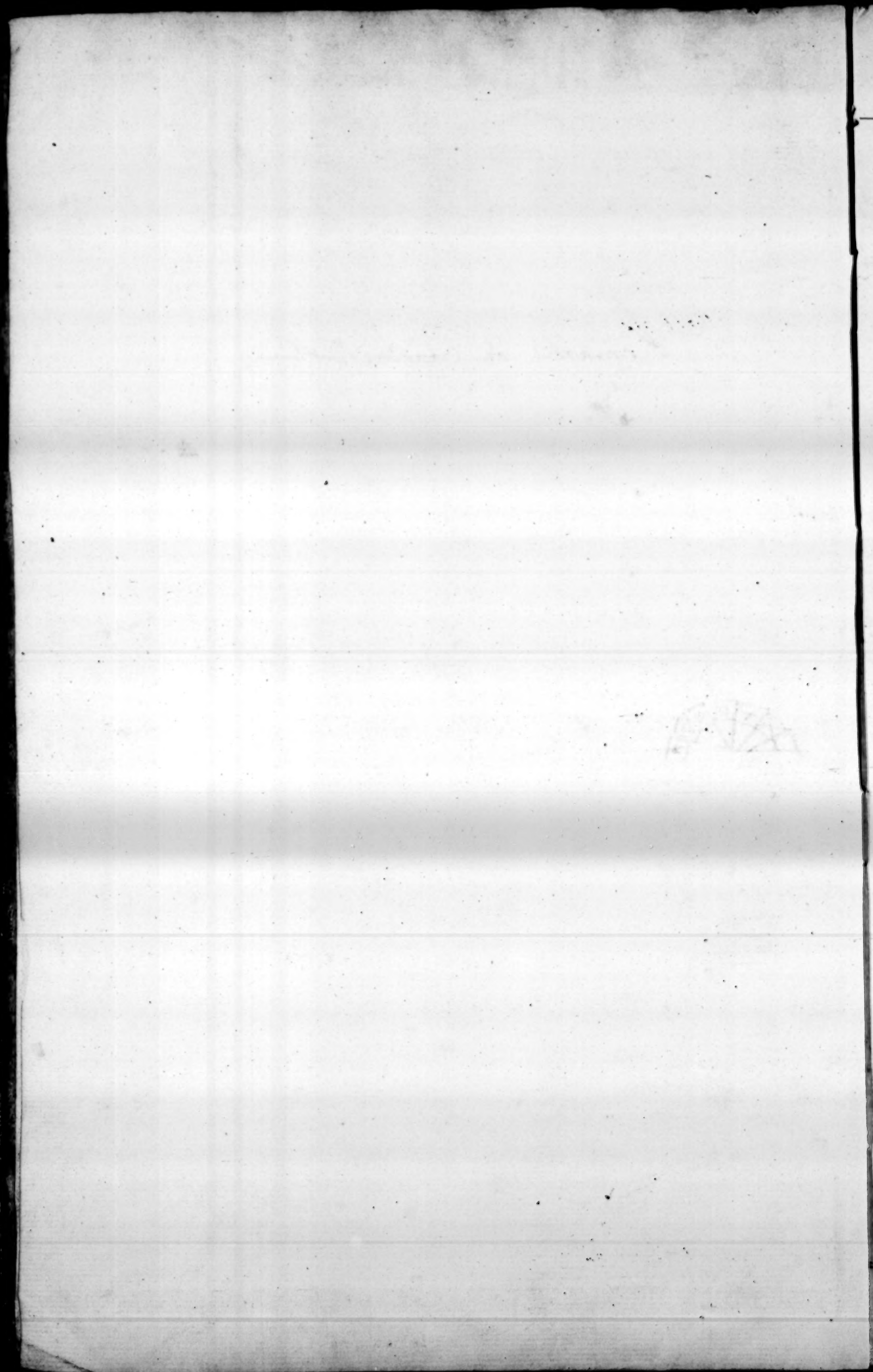


Remarks on Courts Martial





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1
Whenever a Court Martial is ordered to be assembled
at any place where the Judge Advocate of the Fleet or his
Deputy are not present, the Officer who is directed to assem-
ble the same should nominate some person to execute
the Office of Judge Advocate upon that Occasion, and the
Person so nominated, should give the Party Accused timely
notice of his intended Trial and an attested copy of the
Charge or Accusation Exhibited against him, that he may
be prepared for his Defence, and should summon the se-
veral witnesses being persons subject to ^{the} Jurisdiction of the
Admiralty, who may be called upon to give Evidence either
in Support of the Charge or in the defence of the Party
Accused -

The Court is never to consist of more than Three, nor
less than five persons, to be composed of such Flag
Officers and Post Captains, present at the place where the
Court is appointed to be assembled, as are next in Seniority
to the President, who is always to be first, Second or Third,
in command, unless any of them should be unable to
attend through Ill health, and in that case, the President
is to be certified of the same, by letter or otherwise that it
may be taken down in the minutes. —

In case there should not be a sufficient number of Officers of the Degrees of Post Captains, or of a Superior Rank, and at the same time not less than three, present at the Place appointed for holding the Court, the President may call together to his assistance as many of the Senior Commanders of His Majesty's vessels under the Rank of Post Captain, as, together, with the others will make up the number of Five. —

The Officers who are ^{to} constitute the Court, being all assembled, the President is to order the Party Accused to be brought in, attended by the Provost-Marshal; and all the witnesses as well in the Support of the Charge as in the Prisoner's Defence, and every other Person who shall shew it, being also present, the Judge Advocate is to read the Order for assembling the Court, and the Order for his own Appointment, and then Administer to the several Members, the Oaths prescribed by the Act of Parliament and take the customary Oath himself, After which the following Method of proceeding is usually practised —

The Judge Advocate reads the Charges against the Prisoner. — All the witnesses are ordered to withdraw, except the first in Support of the Charge, who is to be desired in the Court and sworn. — The Court directs him to relate what he knows respecting the Charge against the Prisoner, and make such further examination, as they think necessary which being done, the Prisoner is to ask him any Question he pleases.

This Witness being withdrawn the next is called in,
Sworn,

Sworn, and Examined in the same manner, and soon, ³
till the whole Evidence in Support of the Charge is gone
through —

When the Court asks the Prisoner what defence
he has to make, and in case he has any witnesses to produce
in Support of his Defence, they are Separately called in, Sworn,
and Examined, the Prisoner first of all asking them such
Questions as he Pleases, then the Court, and after that the
Prisoner again —

The evidence for the Prisoner being gone through the
Court ask him whether he has any thing farther to say in
his defence

The Court is then ordered to be cleared —

The Judge Advocate Reads the Minutes and after the
Court have fully considered the same, the President puts to
the respective Members such Questions as shall be required upon
beginning with the Junior and proceeding in Order up to him-
self, whose opinion being delivered, the Numbers are collected
and the determination of the Court settled according to the
Majority of Voices —

If the Court should be composed of an Equal number
of Members and there should happen to be an equal number
of Voices / The President included / upon any matter that
may be put to the Vote, the same may be considered, and
if any of the Members should alter their Opinion a final
determination may be made of the point in question, but
if they should adhere to their first opinion upon which
there is an equality, it must remain Undecided —

4
The Sentence of the Court being determined upon, the Judge Advocate is to draw it up in Writing, and the several Members having signed it, all persons are to be admitted and the party accused brought in when the Judge Advocate is, by direction of the President, to pronounce the same -

By Tho^s Graves Esq^r Commander of His
Majestys Ship the *Conestock* and Senior
Captain of His Majestys Ships and Sloop,
at Plymouth -

The Right Honourable the Lords Commissioners
of the Admiralty, having by an Order dated the 4th Instant,
directed me to assemble Courts Martial and try Henry
Smith and Henry Ludlow for Desertion from His Maj^{ty}
Sloop the *Martin*, Walter Stanfords for having a fourth
time Deserted from His Majestys Ship *Albion*, and
John Clayton and William Phillips for desertion from His
Majestys Ship *Tondoyant*, and the Judge Advocate
of the Fleet, and his Deputy being absent, I do with the
consent and Approbation of the rest of the Officers who are
Assembled to constitute the said Courts Martial, hereby
authorize and Appoint you to execute the Office of Judge
Advocate upon this occasion, and for so doing this shall
be your Warrant.

To Mr. Thos. Stephens
herely appointed to
Execute the Office of
Judge Advocate on
the above occasion

Given under my hand on board the
Ocean in ~~the~~ the Feb^r 18/91

Signed / Tho^s Graves -

Plymouth Dock August 17/16 3

A Court Martial being ordered to be assembled on board His Majesty's Ship The Ocean, in the Forenoon to try you for desertion from His Majesty's Ship The Ocean, I am directed by the President to give you this notice of the same; that you may prepare for your trial; and if you have any witnesses to call upon in your defence, you are to send me a List of their Names, as soon as possible, that they may be summoned to attend the Court.

To
----- belonging
to His Majesty's Ship
Ocean ----- } Francis Stephens
hereby nominated to
discharge the Office of
Judge Advocate }

Plymouth Dock 30th October 17/16

Sir/

A Court Martial being ordered to be assembled on board His Majesty's Ship Reasonable on Tuesday next the 1st November at 10 O'clock in the Forenoon to try Thomas Thonnuman a Seaman for Desertion from His Majesty's Ship the Albion under your Command; I am directed by the President to acquaint you therewith, and to beg you will let me know the Witnesses you think necessary to be examined in Support of the Charge. I am also to request the favour of you to cause the enclosed notice to be delivered to the Prisoner; and to permit his List of Witnesses to be sent me with yours, and such of either as belong to the Ship you Command; the President desires you will order to attend the Court at the time above-mentioned

I am with great respect
Sir
your most obedient
humble servant

Honble Captain
Levison Gower
Albion

Francis Stephens
nominated to discharge
the Office of Judge
Advocate

By Richard Spry Esq. Rear Adm^l of
the White, and Commander in Chief
of His Majesty's Ships & Vessels at
Plymouth -

The Right Honourable the Lords Commis^{rs} of
the Admiralty having ordered a Court Martial to be assembled
to try John Hill Armourer of His Maj. Ship Despatch for
Neglect of Duty and Disobedience of Orders - I do hereby
authorize and appoint you to officiate as Provost Marshal
upon this Occasion and you are to take the said John Hill
into your custody, and him safely keep, till he shall be
delivered by due Course of Law in pursuance of the Sentence
of the said Court Martial, and for so doing this shall be your
Warrant.

To
Mr La Dixon
hereby appointed to act as
Provost Marshal on the above
Occasion

Given Under my Hand and Seal
His Maj^{ty} Ship the Ocean in
Hamscaze 21 June 1777
Rd.

By John Anstworth Esq. Vice Adm^l of
the Blue and Commander in Chief
of His Majesty's Ships & Vessels at Plymth

A Court Martial being held Yesterday on
Thomas Condlie belonging to His Majesty's Ship the Albion,
under your Command ^{and} having sentenced him to receive,
two hundred lashes on his bare Back with a cat of Nine Tails,
alongside such of His Majesty's Ships and Vessels at this Port.
at such times and in such Proportions, as shall be Directed
by the Commanding Officer of the said Ships and Vessels
for the time being: You are hereby required and directed
when the Signal shall be made for that purpose on board
the Ocean next Monday Morning, or the next practicable
Opportunity to cause one of the Lieutenants of the Albion
to ^{attend} and see the said Sentence put in Execution by the said

Thomas Conolly receiving Twenty eight lashes alongside each
of the Six Ships, named in the Margin, and Thirty two alongside
the Albion, and you will herewith receive a copy of the Sentence
to be publicly read by the Provost-Martial alongside those respective
ships

Given &c.

To The Honble Leision Gower

In^o Manchester.

&c. &c. &c.

By John Amhurst Esq Vice Adm^l of the
Blue &c. &c. &c.

Whereas I have by another Order of this date,
directed you to cause one of the Lieutenants of His Majesty's
Ship Albion: under your command to see the Sentence of the
Court Martial upon Thomas Conolly belonging to the said
Ship put in Execution: But as I would not have more of the
Punishment inflicted on him at one time than he is able to
bear, and as the Lieutenant may not be a proper Judge of the
Prisoners case, You are hereby required and Directed to cause the
Surgeon of the Albion to attend in the Boat with the Lieut^t
for that purpose, as well as one of his Mates in the Longboat
with the prisoner, and you are to give the Lieutenant Directions
to stop the punishment till further Orders, and return onboard
with the prisoner, whenever the Surgeon shall give it as his
Opinion that he cannot bear any more with Safety

To The Honble Captain
Leision Gower of
H. M. Ship Albion

Given &c.

J. Amhurst.

By John Amburst Esq. Vice Admiral
of the Blue & & &

Whereas you have represented to me that John
Spurrel belonging to His Majesty's Ship the Albion under your
command, is now in a condition to undergo the remainder
of the punishment, hereto by a Court Martial sentenced to receive.

You are therefore hereby required and directed, when
the signal for that purpose shall be made on board the Ocean
next Monday Morning or the first favourable day afterwards,
to cause one of the Lieutenants of the said ship to attend and
see the remainder of the said punishment inflicted on him
alongside those ships mentioned in the Order you received
from Captain Reynolds for carrying into Execution the
Sentence of the Court Martial on the said John Spurrel, where
he has not already received the proportion therein mentioned.

To The Honble Lord
Governor of His Majesty's
Ship the Albion

Given under my hand on board
the Ocean in Hamoye 10 Dec: 1772
Jn: Amburst

By Command of the Admiral
C. S.

(To be lay in Hamoye 17 Dec: 1772.

Sir

I have it in Command from the Admiral to
acquaint you that the Lords of the Admiralty have been
pleased to remit the remaining Part of the punishment
which John Saunders belonging to the Ship under your Com-
mand was sentenced to receive.

I am

To The Honble
Capt Barrington

C. S. Secretary

By the Honble Samuel Barrington Rear
Admiral of the Red & Commander in
Chief of His Majesty's Ships & Vessels
and to be employed at Barbadoes and the
Leeward Islands, and in the Sea Adjutant

By Virtue of the Power and Authority to me given,
I do hereby authorize and appoint you to act as Provost Marshal
of the Squadron under my Command till further Orders,
And you are accordingly to take into your custody all such
Persons belonging to the said Squadron as shall from time to
time be ordered to be tried by a Court Martial and to keep them
in Safety till they shall be delivered by due course of Law.
And for so doing this shall be your Warrant.

To Mr Mr. Weir
hereby Appointed to
act as Provost Marshal
By Command of the Admiral
J. S.

Given under my hand on board
His Majesty's Ship Prince of Wales in
Carlisle Bay Barbadoes 16 Aug^r 1779
S. B.

By the Honble Samuel Barrington
Vice Admiral of the Red & F.

His Majesty's Ship the Ceres late belonging to
the Squadron under my Command having been taken the 17th
of last Month by a Part of the French Fleet under Count D'Estaing
And Captain La Motte Piquet who commanded her being now
here together with the rest of the Officers and most of her
Company - You are by Virtue of the Power and Authority
to me given hereby required and directed to assemble a Court
Martial as soon as conveniently may be to enquire into the Loss
of the said Ship the Ceres and to try her Officers & Company for
the same
Given in Grand Cul de Sac in the
Isle of St. Lucia 14 Jan^y 1779 A.D.
By Command J. S.

Mr. Hotham Esq. Commodore and
Second Officer in Seniority of the S. B. Vessels
in the Grand Cul de Sac St. Lucia

By the Honble A. Barrington
 He He He

His Majesty's Sloop Ceres having been taken on the 17th last month by a part of the French Fleet, I have thought fit to Order a Court Martial to be assembled to enquire into the Occasion of her Loss and the Conduct of M^r Dacies who commanded her and the other Officers and Company thereunto belonging on that Occasion And whereas I have received very Satisfactory Information touching your Abilities and Discretion, qualifying you for the Trust of Provost Martial for the time being and having thought proper to appoint you to that Office accordingly You are therefore by virtue of such Commission hereby authorized and enjoined to apprehend and keep in your Safe Custody the Bodies of the Officers and Company of the said Ship as are to be found at this Place, untill they shall be released or otherwise adjudged by Sentence of a Court Martial or until further Order; All Officers of the Fleet and other Persons concerned being hereby Required to be Obedient and assisting to you herein as they will answer to the contrary
 Given & 10 Jan'y 1779
 A.B.

To
 Mr. A.B.
 hereby appointed to
 Act as Provost Martial for the
 time being

By the Honble A. Barrington
 He He He

Captain Parker Agent of Transports having applied to me to Order an Enquiry into the Conduct of M^r Andrew Stephens late Master of the Admiral Shuldham Transport for Suffering the said Transport to be taken by the French the 16th of last Month You are hereby Required And Directed as soon as Conveniently may be to call before You such

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Persons as you shall think necessary and enquire into the
Occasion of the loss of the said Transport and the Conduct of the
said Andw Stephens thereunto relating reporting to me from
under your Hand your Proceeding therein

To The Captains of the
Lis, Preston & Farnworth

By Command of the Admiralty

Given by Susan the General
at St Lucia 16 Feb'y 1779
S^d.

St Lucia 18 Feb'y 1779

Sir

I have it in Command from the
Admiral to acknowledge the Receipt of your Letter of this Date
inclosing the Minutes of a Court Martial held the 15th Inst^o for
enquiring into the loss of the Maj^{or} Hoop the boats

John Levil Esq^r

Sam^l Esq^r

St L Secy.

Preston

A Copy of the Opinion of the Attorney General, the Solicitor
General and the Hon^{ble} Heneage Legge respecting the
number of Witnesses to be Examined at Courts Martial
dated 26 Apr^{il} 1746

In Answer to the Questions of the within Letter
we think the Court should not refuse any Witnesses that
are now Ready to be Examined if the Prosecutors insist they
are Material But we are of Opinion it is in the power
of the Court to limit a certain time for concluding the
Examinations, what time that would be must depend
upon all the Circumstances, of which the Court only can
be the Judge; But we think the Prosecutors, should be
very careful not to call too many to the same Facts which can
only tend unnecessarily to protract the Trial and finally
to Conclude the Justice of them

D Ryder

M Murray

H Legge

A Copy of the Opinion of Doctor Paul upon a Debate
arising at a Court Martial when an equal Number of Members
were on each Side

To the Right Honble the Com^{rs} for Executing the
Office of Lord High Admiral of Great Britain &c

May it please your Lordships

In humble Obedience to your Lordships Com^{ds}
Signified to me by Mr Manningham your Lordships Solicitor
referring to me a Letter from Mr Atkins Deputy Judge Advocate
of the Fleet setting forth, that upon a Debate & certain
matter was put to the vote at a Court Martial upon which
there appeared to be equal Numbers, the President included
viz - Ten against Ten, upon which a motion was made
and agreed to, that since an equality of votes may happen
in some material cases, therefore that a Letter should be
wrote to your Lordships for your Opinion what may be
proper to be done when a matter is put to the vote and
the Members are equal on both sides the President in-
cluded, and how that matter is to be determined,
directing me to lay before your Lordships my humble
Sentiments upon this Case.

I with great Submission Certify to
Your Lordships that by the Laws of this Realm when there
are a Number of Judges appointed to adjudge and
determine a Point of Law or Fact the same must be
settled by a Majority. In the Kings Bench, Common
Pleas and Exchequer there are each four Judges, the Chief
is vested with a superior Dignity not much unlike a
President but in divisions where two Puisne Judges
descent from the Chief and one Puisne Judge, no
Judgment can in such a case be given. In the Court
of Delegates where the Lord High Chancellor appoints
a Number of Judges, if at any time upon an Ordinary
Act or Sentence the Court happen to be Divided, no

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Order a Sentence can be Obtained, although there is always
a Person of Superior Distinction placed at the head of such
Commission of Delegates

I therefore conceive that a Court Martial should
observe the same Rules that other Courts of Justice comply with
The point at issue may be reconsidered by the same Judges, and
if they shall alter their Opinions, they may induce a final
Determination of the Points in Question, but if the several Members
of the Court Martial adhere to their first Opinion, upon which
there is an Equality, I think the Question must remain unde-
-cided

Doctor Commons

Sam^r & J. Paul

June 28 - 1746

A Copy of the Opinion of Doctor Harris, respecting the
legality of assembling about Martial when any of the
Officers next in Seniority to the President are unable to attend
through Ill health

It appears to have been the Intention of the
Legislature by the Act of the 22^d Geo. 2.^d that every Court
Martial should be composed if possible of Senior Officers, but
though the words of the Statute are ~~that~~ no Court Martial
shall consist of more than thirteen or less than five Persons
to be composed of such Persons as are next in Seniority to the
Officer who presides they can never I think be understood
that the Next in Seniority to the President who happen to
be present on the same Station with their Ships should
all attend in Order, at all Events and notwithstanding any
Impediment whatever, or otherwise no legal Court can
be held - for such a Construction appears not only
to be unreasonable as well as detrimental to His Maj.
Service by rendering it extremely difficult to make a
Court, but also to be very Contrary to the General Tenor
of other Parts of the Act which is calculated to expedite
Justice as much as possible by permitting five Captains
to constitute a Court and even by allowing Comm^{rs}
to assist when a sufficient Number of Port Captains

is not to be found

And as I observe that every Court Martial has an Express power by the 15 Section of the Statute, to dispense with the presence of any Member, and suffer him to go on shore in case of Sickness, even after a Trial is begun, there seems to be no Reason to doubt but that any Officer may be excused from attendance by the President and Court, if a just reason is assigned before the Trial is begun, and that they may afterwards proceed to Business, if the remaining Number of qualified Officers is sufficient to constitute a Court Martial, I therefore apprehend that Mr Mackenzie and the five other Captains may legally assemble and proceed as a Court to try W^m Skane if it is taken down in the Minutes, that the Absence and Senior Officer have certified the President by Letter or otherwise, of their Inability to attend through ill Health

Doctors Commons
4th Nov^r 1765

(signed) G. Thomas

Queries relating to Naval Courts Martial and answered by Judge Butler supposing the facts contained in them to be accurately stated, as well as the clauses of the different Acts of Parliament which are alluded to

1st What is properly the Office of a Judge Advocate, The Act of the 22nd Geo: 2^d says he is to Swear the Court, And the Evidence, and the General Printed Instructions under the heads of Court Martial, direct him to take Minutes of the proceedings of the Court, to advise them of the proper Laws, and to deliver his Opinion in any Doubt or Difficulties that may arise in the Course of a Trial, But I should be glad to know whether he is Prosecutor for the Crown, and if so, whether he can with propriety advise the Prisoner and assist him in his Defence

As to the 2nd Query. The Duty of a Judge Advocate can only be collected from the Statutes which relate to Naval Courts Martial, and the constant practice Since the first of these, which is supposed to be of Charles 2

It is undoubtedly his Duty that the proof of both on the part of the Crown and the Prisoner should be laid before the Court and where the Point is doubtful he should incline on the part of the Prisoner.

2nd By the Act of the 22nd of George 2, a Court Martial is authorized in the absence of the Judge Advocate of the Fleet or his Deputy, to appoint a Person to execute the Office of Judge Advocate; but as it can not properly become a Court Martial, till the Members are sworn, and they cannot be sworn but by a Judge Advocate, how and when is such a Person to be appointed. It appears highly reasonable that he should be appointed some time before the Court assembles as there ought to be some Person to give the Prisoner notice of his Trial, to Summon the Evidence &c. which are supposed to be part of the Judge Advocate's Duty; has not the President therefore authority as soon as he receives an Order to assemble about Martial, to grant a warrant to some Person to execute the Office, who if not objected to by the Majority of the Members, will of course become the officiating Judge Advocate agreeable to the Act; and can it be a legal Court Martial if the Person officiating as Judge Advocate be appointed by warrant from the Commander in Chief of the Squadron, instead of the President?

as to the 2^d I think that the Court Martial as soon as it is assembled, may appoint a Judge Advocate, and as the Act says it must be done by the Court if a Majority should concur in the appointment. It would not be improper however to have this explained by a new Act.

3rd By the Act of 22nd Geo. 2 a Court Martial cannot be held at any Place where there are less than three Officers of the Degree and Denomination of a Port Captain or of a Superior Rank. Can therefore a Court Martial be legally assembled at any Place, where there are only two Ships of Port, a Sloop commanded by a Port Captain and two other Ships. The Sixth Article of the general Printed Instructions under the head of Rank and command, directs that Commanders of Fireships, Store Ships though they may have commanded Ships of Port

16. 3rd cont^d shall be commanded by Senior Captains in ships of Port while they keep company together, either in Port or at Sea, but without prejudice to their Seniority afterwards;

But though this Article deprives them of their Seniority for the time, it does not expressly deprive them of the Rank and degree of Port Captains even for that time - The Question then is whether a Port Captain commanding a Sloop is to be considered as the Junior Port Captain, or as Master and Commander? If the former he must sit as a Member of every Court Martial that shall be held at the Place where he may happen to be: but if the latter he can only be called upon when there are not less than three nor yet so many as five Officers of a Superior Rank as to the 3rd. In the case put, if there ^{are} three Port Captains present the one of these commanding only a Sloop, I think a Court Martial may be regularly appointed.

4 Can a Prisoner challenge any of the Members of a Court Martial? Or can the Captain of the Ship to which the Prisoner belongs, in case he is one of the twelve next in Seniority to the President, be excused from sitting as one of the Members of a Court Martial, either on account of his having applied for the Court Martial, or of his being called in as an Evidence, for or against the Prisoner, since the Act of the 22^d Geo: 2^d expressly requires that the Court shall be composed of the Captains next in Seniority to the President who shall be present at the Place where the Court shall be assembled.

As to the 4th The Prisoner cannot challenge any Member of a Court unless he is empowered to do^{so} by the Act, but if any of the Members may be supposed to have a Bias, they would do right to apply to the Court to be excused on that account, and the Place might then be filled up by the next Captain in Seniority. Various Oaths having been administered by different Officiating Judge Advocates, to Witnesses both for, and against the Prisoners, what is the proper

5th Oath? And is a different one to be tendered to Witnesses in
 behalf of the Prisoner, from that to those against him
 As to the 5th The form of the Oath is probably prescribed by the Act in
 relation to Courts Martial, If it is not, the following form
 is sufficient, when the witness is examined either on the part
 of the Crown or the Prisoner. "You shall say the Truth, the
 whole Truth and Nothing but the Truth." So help you God!
 6th Can the Party who exhibits the charge against the Prisoner
 to be tried at a Court Martial, be admitted to give Evidence
 as a witness against him?

As to the 6th The Party exhibiting the charge may be a Witness, the
 Prosecutor is so upon all Indictments of the Common Law.

7th Is a Court Martial empowered in Examining the
 Evidence in defence of a Prisoner, to direct a Witness
 (which has frequently been the case) to relate what he
 knows respecting the charge? Or only to cross examine him.
 The former does not seem equitable, because through the
 Ignorance of a Witness who may be called in his Defence
 a Prisoner may be condemned, which would be the same
 as condemning himself.

As to the 7th The Members of a Court Martial may ask what
 Questions they please from any witnesses, provided they
 are pertinent, and of their pertinency, the President
 and Court are to be the Judge.

8th A Court Martial is sworn not to discover the Vote or
 Opinion of any of his Members unless required by Act
 of Parliament, and yet in the Resolutions and Sentences
 of some Courts Martial (particularly those on Admir.
 Byng and Captain Brocksbants) the words, "unani-
 mously of Opinion" have been made use of, which is of
 course, discovering the Opinion of every Member — Can therefore
 the word, Unanimous or Unanimously, be inserted in the
 Resolutions or Sentences of a Court Martial, without a violation
 of the Oath taken by the respective Members.

Ans. The Clause referred to, Only prohibits the Member of Courts
 Martial from divulging the Opinion of any particular
 Member, when they all agree unanimously. No.

10th *Ans.* Prejudice can arise from such Opinion, being made known, either to the Public, Prisoner, or Member of a Court Martial

9th Q. The general Printed Instructions, order that Courts Martial shall always be held in the Forenoon, but it sometimes happens, when two or more Courts Martial are in Agitation, that one may break up, just at Noon exactly. In such a case, might not the Court be sworn and proceed to Business afterwards, without the legality of it being called in question; since no mention is made of this circumstance in the Act of Parliament and Her Majesty's Service might require the trial to be Expedited

9th *Ans.* The Directions of an Act of Parliament must always be followed, where they are clear and positive; if therefore it is already Noon, it cannot be considered as the Forenoon

10th Q. When a man is Sentenced to receive Corporal Punishment at such times, and in such proportions, as a Command in Chief shall direct, has not such Commander in Chief the Power of remitting the whole or any part of the said Punishment?

10th *Ans.* If the Prisoner is to receive Corporal Punishment, by the Sentence of a Court Martial, the Commander in Chief cannot dispense with any part of the Punishment, he is only empowered to regulate the proportion of the Lashes and the times at which they are to be inflicted

11th Q. As the Judge Advocate by the General Printed Instructions, under the head of Courts Martial, is to advise the Court of the proper forms, and to deliver his Opinion in any Doubts or Difficulties, that may arise in the course of their Proceedings; What is necessary to be done when after having given his Opinion, the Court proceed directly contrary to it

11th *Ans.* The Judge Advocate may if he chooses it represent it to the Admiralty that his Instructions were not attended to;

W. An^d by a Court Martial, but the Members of such Court are not to be controuled by his Opinion, and are to act for themselves according to the best Judgment they can form

Case and Opinion of the Competency of a Court Martial to try Persons belonging to His Majesty's Ships in Ordinary on a Complaint made by Mr. Tait first Lieutenant of the Ship the Rippon: a Guardship at Portsmouth; against Alex^r. Cockburn Gunner of His Majesty's Ship the Centaur in Ordinary at Portsmouth; for challenging him to come on shore and fight him; otherwise, he Cockburn; would Part him Tait for aboard

The Right Hon^{ble} the Lords Commissioners of the Admiralty were pleased to direct a Court Martial to try the said Alex^r. Cockburn; a copy of their Lordships Order was as follows

By the Commissioners for executing the Office of Lord High Admiral of Great Britain and Ireland &c.

Whereas Vice Admiral Holburne has transmitted to us with his Letter of the 19th Inst^t the inclosed Letter, which he has acquainted us, was brought to him by Capt^t. Bennett of the Rippon, acquainting him that Mr. Tait first Lieut^t of that Ship has been challenged by Mr. Cockburn Gunner of the Centaur, by a Message sent him by the Surgeon, that if he did not come on shore; and fight him; he would part him for aboard; And whereas we think fit that an Enquiry should be made into that affair at a Court Martial, and that the said Alex^r. Cockburn shall be tried for challenging the said Lieut^t Peter Tait; You will receive herewith Vice Admiral Holburne's above mentioned Letter, as well as that which was brought to him by Capt^t. Bennett as aforesaid, and are hereby required and directed forthwith to assemble a Court Martial for making Enquiry therein, and for trying the said Alex^r. Cockburn for challenging the said Lieut^t Peter Tait accordingly

To the Senior Captain of His Majesty's Ships and Vessels at Portsmouth
By Command of their Lordships
Jth Stephens

Given Under our Hands &c.
30th July 1765

In pursuance of the said Order the several Captains of His Majesty's Ships at Portsmouth met in order to compose a Court Martial for the Trial of the said Alex^r Cockburne; but on their taking into consideration the aforementioned Order and the nature of his Case, it being that of a Warrant Officer of a Ship in Ordinary, they entertained great doubts whether, Ships in Ordinary are under the immediate directions of the Commissioners of the Dock Yards, and have generally been esteemed to be liable neither to Martial Law or the direction of Military Officers they as a Court Martial, had the jurisdiction over the said Alex^r Cockburne - Whereupon you are desired to consider the circumstances of the Case, and peruse a copy of their Lordships general Order to the Navy Board relating to His Maj^{ty} Guardships, left herewith, and advise whether under the circumstances of this case, ^{a Court Martial} had, or had not, a jurisdiction over the said Alexander Cockburne, and to proceed to try him accordingly.

Mr Cockburne being in actual Service and full Pay, on board one of His Majesty's Ships in the Office of Gunner, I can entertain no doubt but that he ought to be regarded as being in His Majesty's Fleet within the intent of the Statute of 22nd Geo: 2nd Cap: 33.; and is subject to a Court Martial on account of the Challenge which I take to be an Offence against the 23rd Art. or Order contained in the aforementioned Act of Parliament, in which Article it is declared "That if any Person in the Fleet shall use Reproachful or provoking Speeches, tending to make any Quarrel or Disturbance he shall suffer such Punishment as the Offence shall deserve, and a Court Martial impose." - For although Mr Cockburne by being on board a Ship in Ordinary may be more immediately under the Inspection of the Commissioners of the Navy, and Dock Yards, than under the Command of an Admiral, he nevertheless does not cease to belong to one of the Kings Ships as a Warrant Officer, and as such, subject to the Command of the Lords of the Admiralty, who as I apprehend may either appoint a Court Martial to examine into his Conduct, or dismiss him from the Service without any Enquiry, if they think proper so to do. And in this Light, it appears no hardship that his Behaviour should be enquired into and as I believe it was never yet questioned but that an.

Officer of a Ship in ordinary might in consequence of an Order from the Lords Commissioners of the Admiralty to be tried by a Court Martial on the 27th Act: "for sleeping at the time of the Watch" or "for negligence in the performance of his Duty to the Detriment of His Majesty's Service" it would be difficult to say how such an Officer could be subject to a Court Martial under the direction of the Lords of the Admiralty, for one Offence and not for the other, within the same Articles, which are all authorized under the same General Act of Parliament; On the whole therefore, I apprehend that the Order to the Board of Admiralty to the Senior Captain of His Majesty's Ships at Portsmouth, to assemble a Court Martial in this case is legal, and consequently that the Court so appointed is fully empowered to enquire into Woodburn's Behaviour in regard to Mr Tait, and to judge of it according to such Circumstances as may arise upon the Evidence given at the Trial

Geo Harris

In Commons
22 August 1765 }

A Copy of a Sentence of a Court Martial upon the Officers of His Majesty's Ship the Stag for Confining their Captain

At a Court Martial held on board His Majesty's Ship Vanguard in (at Navire) Bay - Martinique the 24th Feb^r 1766

Robert Swanton Esq^r. Commodore - President,

Captains	Mr Baker	Captains	Mr Harvey
	Samuel Marshall		Geo Hardy
	Thomas Bankerson		Wm M. Cleverly

Tho Hardy, Deputy Judge Advocate Being all duly Sworn -

1764
1762
1762

Pursuant to an Order from Geo Bridges Rodney Esq.
Rear Adm^e of the Blue, and Commander in Chief of His
Majesty's Ships & Vessels employed and to be employed at Barbadoes,
and the Leeward Islands and the Sea Adjacent, dated
3 February 1762 —

Proceeded to the Trial of Lieutenant John Bazelty,
John Mc Braith Master James Miller Boatwain In^o
Dabrymple Gunner — Geo Blaney Carpenter Mr Porter
Lieutenant of Marines — In^o Profer Purser — And Mr
Spence Surgeon — All belonging to His Majesty's Ship Stag
for taking the Command from, and confining their Captain
Henry Ingle their then Commander —

The Order for Trial having been first Read, as also
the Certificate signed by the aforesaid Officers, for confining
their said Captain, and having heard what the Prisoners
had to say in their Defence, and having maturely considered
the whole and every part thereof —

The Court are of Opinion that the Charge is proved
but it appears that the Certificate was not signed in a
mutinous manner but that the Officers met together in com-
pliance with the request of their late first Lieutenant for
their Opinions, The Court do acquit all of them of any Design
of mutiny thereby, and therefore Adjudge them to be severely
reprimanded for their Conduct, by the President —

Signed / Robert Swanton

John Barker

John Harvey

Scot^t Marshall

George Darby

Thos Matherson

Wm M. Cleverly

Thos Barley

Dep^y Judge Advocate

These are to certify the Right Noble the Lords Commissioners of the Admiralty, that Mr Francis Stephens executed the Office of Judge Advocate at a Court Martial assembled by me and held on board His Majesty's Ship Ocean in Namoye, in pursuance of an Order from their Lordships dated the 10th Instant, to try Benjamin Roberts a Seaman belonging to His Majesty's Ship the Somerset, for having deserted from leave to go on Shore, from Surin the beginning of October last, and that he provided Stationaries and was Employed on the said Trial, and in matters relative thereto, Ten Days.

Given &c. 31st January 1791

Signed A. B. President.

At a Court Martial assembled in Portsmouth Harbour, for the Trial of Captain Pakenham, on the 14th July 1791, upon the accusation of Lieutenant Hankin of the same Ship Merlin.

Vice Admiral Botham President

Rear Admirals Sir Richard King

Son^r Faulkner

Philip Cosby

Cosby

Honble Levison Gower

St Goodall - Samuel Cranslow Goodall

St Hyde Parker 1st Capt^m to Lord Abode

Captains

Rich^d Onslow

Rob^t Kingmill

Rouland Cotton

J^r M^r Bride

Geo^s Gayton

Rob^t Linzee

2^d Lieutenant Hankow desired to be admitted as an evidence in Support of the Charge he had alledged against Captain Pakenham, and afterwards to be allowed to remain in Court, to conduct and carry on the Prosecution; The Court was pleased, and determined that Lieutenant Hankow, might have his choice of two things viz. Either to be heard as an evidence in Support of his charge, and afterwards to remain out of Court, or not to be heard at all, if he was to carry on the Prosecution and remain in Court for that purpose.

Sir Thomas Hardy, Tried at a Court Martial on board the Albemarle in Portsmouth Harbour the 10 October 1707. for not Chasing Six Ships he saw off the Torad, Supposed to be a Squadron of the Enemies Ships under the Command of Mons. Duques (Troyin)?

Sir John Leake President

Captains	Ships	At what place
Walter	Exeter	Portsmouth
Lumley	Essex	Chatham
Martin	Albemarle	Portsmouth
Meads	Burlington	Longreach
Gow	Bristol	
Stewart	Garland	Spithead
Paul	Hastings	Portsmouth

24 May not the Affidavits so taken, be received as Evidence at the Court against the Captain? In trial of Misdemeanors the Law requires the best Evidence that can be had, and such witnesses as are residents, within the Realm must be brought to prove the Facts charged, & the Party accused may claim a right to cross examine every witness produced.

The Martial Law does not require so strict a procedure, as in the Common Courts of Justice, the reason arises from the necessity of guarding against irregularities, which often arise in Armies at Land, & Fleets at Sea, for the sake of speedy Justice, the Officers in the Service, who are Men of Honour have a Power delegated to judge consistent, with right Reason & Equity: And I conceive that such Proofs as would satisfy an Honest Man, that a Fact was so had & done, as alleged by the Prosecution, without the strictest forms of Law, will be sufficient to convict in a Court Martial. If any witnesses can be produced to prove the Facts charged, there seems to be no reason to doubt, but that the affidavits taken in this case, upon the Captain's swearing himself, may be laid before the Court Martial, to corroborate the *Viva voce* Evidence.

G. Paul

Adm. Comons 28 August 1739

A. Grace Jones

Thos. Corbett

Admty Office 14th February 1742

Sir

I have receiv'd and read my Lord Comms of the Admty your Letter of Yesterdays date, inclosing the Sentence and Proceedings of a Court Martial held the 11th instant on board the Shrewsbury, on Laurence Gandy and Mr. Mathew for Mutation; and their Lordships observing that the Court Names the particular Ships onboard which they are to suffer Death; I am commanded to acquaint you, that they think the same to be liable to many Inconveniencies, and that it should rather be left, general, onboard any of His Majestys Ships the President thinks fit; as an instance of which I am to inform you, that a Seaman being lately condemned at a Court Martial, held at Plymouth, to suffer Death, and to be executed onboard, His Maj^{ty} Ship the Monarch, and the Service requiring the immediate sailing of the said Ship, there was not time to procure His Majestys consent to the Execution before she went to sea. I am

Sir

Your very humble servant,

Mr. Athens Ports.

Tho^s Corbett.

Vote, of the Honourable House
of Commons the 11th April 1745.

Resolved

That an humble address be presented to His Majesty, that he will be graciously pleased to give directions, that Courts Martial may be held, in the most speedy and solemn manner, to enquire into the conduct of Admiral Matthews,

Vice Admiral Lestock, Captain Murrish, Capt R.^d Norris, Captain^{2d} Williams, Captain Ambrose, Captain Frognore, Capt.^{3d} Dilke, in, and relating to, the late Engagements, between His Maj.^{ty} Fleet, and the Combined Fleets of France and Spain off Toulon, and of the Lieutenants of His Majesty's Ship the Dorsetshire then aboard, and of all other Officers, who are, or shall be, charged with any misconduct in that Action, and to try them for the same, and that His Majesty would be pleased to appoint a proper person, or persons, to collect all the Evidence necessary for the Trials of the said several Commanders and Officers, and to prosecute them Effectually; in order to bring those to condign Punishment, through whose misconduct it shall be found, that such Disrespect has been brought upon His Majesty's Arms, the Honour of the Nation Sacrificed, and such an Opportunity lost of doing the most Important Service to the common Cause.

11 April 1745 The House of Commons addressed the King that his Maj.^{ty} would please to give directions that Courts Martial may be held in the most speedy and solemn manner, to enquire into the Conduct of Adm.^l Matthews, Vice. Adm.^l Lestock, Capt Murrish, Capt Richard Norris, Captain Williams, Capt^{2d} Ambrose, Capt^{3d} Frognore, Captain Dilke, in and relating to the late Engagements, between His Majesty's Fleet & the Combined Fleets of France & Spain off Toulon, & of the Lieut^s of the Dorsetshire then aboard, & of all other Officers, who are or shall be charged with any Misconduct in that Action & to try them for the same, and that his Majesty would be pleased to appoint a proper Person or Persons, to collect all the Evidence necessary for the Trials of the said several Commanders & Officers, & to prosecute them effectually, in Order to &c.

20
10. April --- The Duke of Newcastle transmitted the said Order
to the Lords of the Admiralty, & Signified his Majesty's Pleasure
that their Lordships should comply with what is desired thereby.

In pursuance of his Majesty's Pleasure so signified
the Lords of the Admiralty appointed Mr. Sharpe & Mr. Chesney
to collect all the Evidence necessary for the Trials of the said Officers
& to prosecute them effectually: and those two Gentlemen were
accordingly employed in preparing the Charges and collecting
the Evidence against such of the Named Officers as were in
England, & also against some others since charged with Miscon-
duct in the said Action: And the Lords of the Admiralty by Order
dated the 11th Sept^r last directed S^r Chas^r Ogle to assemble a Court
Martial on board his Majesty's Ship London at Chatham, upon
the 23rd of the said Month, who were to proceed to enquire into
the Conduct of Admiral Matthews, Vice Adm^l Lescock, Captⁿ Brown
&c. in and relating to the said late Engagement between his Maj-
ty's Fleet & the combined Fleet of France & Spain off Toulon, & try
them for the same, upon such Charges as the Prosecutors for the
Crown had preferred against them, & in the Trials of the said
Officers, S^r Chas^r Ogle was directed to begin first wth the Lieut^s then
go on with the Captains, & lastly with the Flag Officers.

Court Martial was accordingly assembled by S^r Chas^r Ogle
& the Lieut^s were tried, & Sentence of acquittal was pronounced:
And the Court then proceeded to the Trial of Captⁿ Brownish
heard the Evidence of all the witnesses produced by the Prosecutors
for the Crown in Support of the Charge against him, & also of all
those produced by himself in his behalf.

And there is being observed that the Tenor of the Oath taken
by each Member is, well & truly to try & determine the Matter before
them between the King & the Prisoner to be tried;

And some of the Members of the Court being of Opinion, that they could not comply with the Tenor of that Oath, without hearing all the Evidence to be given at any of the Trials, in relation to the said Engagement; Since after so hearing the whole Evidence, the Conduct of each Particular Officer to be tried, may appear to the Court in a different Light from what it may appear in when only one part of that Evidence has been heard: And therefore the same Members were farther of Opinion, that if the consideration of the Evidence already given relating to Capt. Burrieth's Conduct, & the passing Sentence thereupon, were to be deferred till they had gone through the whole Evidence that may be given relating to all the Officers Accused of Misconduct in the same Engagement; This doing so, may enable the Court more truly to determine upon Capt. Burrieth's Conduct therein, And consequently to do strict Justice between the King & the Prisoner.

24. Can the Court, legally defer passing Sentence upon Captain Burrieth, till they have gone through the whole Evidence relating to all the accused Officers and if they can, and should so defer it, can they consider the Evidence given at the ensuing Trials, as in any manner affecting Captain Burrieth; and admit the same to have any weight in the forming their Judgement & Sentence upon his Conduct?

Ans.^r We have considered the Question & are of Opinion that there is no Law which Prohibits a Court Martial from taking time to give a Sentence but we apprehend it to be most proper and most agreeable to practise to give a Sentence upon a Trial for a Capital Offence, before the Court proceeds to any other Trials, for Offences of the like Nature.

And we are very clearly of Opinion that they cannot consider the Evidence given at any ensuing or preceding Trials as

in

30th in any manner affecting Captain Barrish & that they cannot
by Law admit such Evidence to have any weight in forming their
Judgement & giving Sentence upon him

G Paul
Will. Statham
Geo Lee
Dr. Commons Oct 4. 1745

1 Court Martial is intended to be soon held for enquiring into
the Conduct and Behaviour of several Officers in the late Naval
Engagement off Toulon in February 1743; and Charges have been
prepared by the Prosecutors in behalf of the Crown, against these several
Officers who are to be tried: Should such Charges be laid before the
Court by the Judge Advocate? Should he examine the witnesses
upon such Points as may occur when he is proper or necessary
at the Trials, as well in Support of the Charges, as in behalf of
the Persons charged? And in the deliberations or Debates of the Court,
ought he to offer his Sentiments & Opinion, if he should judge
the same proper or requisite for the Information of the Court?
And, ought he not to offer to lay before the Court, whatever he judges
may tend to their Information?

The Charge intended to be laid before the Court Martial ought to
be produced by the Judge Advocate.

He may examine the witnesses upon such Points as may occur when
he is proper or necessary to be considered at the Trial, as well in Support
of the Charge, as on behalf of the Persons accused. In the Deliberations
& debates he must offer his Sentiments & Opinion if required, or if he
observes any Error in Points of Law, he ought to offer his Judgement
on the Point, for the Information of the Court. And he ought to lay
before the Court every matter or Thing, that may conduce to a regular
Decision of the Points in Question.

2. — Part of the Judge Advocate's duty at a Court-Martial is to take Minutes of all the Proceedings thereof, (which Minutes are to be attested by the Judge Advocate), and are the only Authentick Account of the Courts proceedings:

Ought not the Court to be so deliberate in their Proceedings, as to allow sufficient time for the Judge Advocate to take his Minutes of the whole Proceedings with Exactness? But if the Court should scruple to do so, and not allow sufficient time in their Proceedings for that purpose; how in such case ought the Judge Advocate to act?

A Court-Martial ought to allow a sufficient time for the Judge Advocate to take proper minutes of the entire Proceedings with Exactness. And the Minutes taken should be read to the Court; and be approved by them. We are of Opinion, that the Court, can't in point of Justice deny sufficient time for the taking proper Minutes of the Proceedings.

3. — It is Customary for the Judge Advocate to take preparatory Affidavits from the witnesses in Support of the Charges against a person to be tried at a Court-Martial:

Is it fitting or proper, that such Affidavits, should be communicated to the Officer appointed to assemble, or preside at the Court-Martial, or to any other Officer, who may be summoned as a member of the Court; till the same are properly laid in a Judicial way before the Court-Martial?

It may be proper for the Judge Advocate to communicate to the President of the Court-Martial, the Affidavits taken by virtue of his Office, but not, to the several other Members that compose the Court, before the Court shall be regularly assembled.

4. — It has been the general Practice at Courts-Martial for the Presidents to put the Interrogatories to the witnesses. In case a President should decline to put an Interrogatory desired by any member of a Court-Martial, and not suffer it to be put; what method is in such case fitting & proper to be taken?

32 And is it a necessary Form that the President, should put all Interrogatories to the witnesses?

The President is certainly the proper Person to put the Interrogatories to the witnesses; if he should decline or refuse to put a Question proposed by an Inferior Member, then it ought to be determined by a Majority of Votes, whether that Question should be put or not. If the Majority agree that the Question is proper, then the President ought to put and propose it to the witnesses.

5. --- When Courts Martial proceed to a Determination upon Matters before them; if the Members are not unanimous therein, the Sentences are drawn up agreeable to the Sentiments & Judgement of the Major part of them; And such Sentences have usually (if not constantly) been signed by all the Members, as well those who agreed thereto, as those who did not: Is it necessary, & holy, that Members of Courts Martial, who do not concur with the Majority in their Determination, should nevertheless sign the Sentence drawn up agreeable to such Determination?

The Sentences in Courts Martial receive their Force & Validity from the Judgement of the Majority; that all the Members present ought to sign such Sentences, altho they differ in Opinion.

6. --- If a Court Martial consisting of any Number of Members whatsoever adjourns from time to time as may be found necessary; and during such adjournments the Number of Members who first composed the Court, are unavoidably reduced by Sickness, Death, or otherwise: May not such of them as remain from time to time meet, according to the adjournments, and go on with the Examination into and determination of the Matters before the Court? would the Addition of new Members be proper; and would it in that case be extended

a continuation of the same court?

33

If the number of a court martial be reduced, by Sickness, Death, or any other Accident, the remaining Members may meet, and act, at the several Adjournments. The Addition of new Members will not be properly, unless such Persons should hear or be well informed of the Evidence given before their Attendance.

Of ----- Is it fitting or proper that copies of the Affidavits in support of a charge against a person to be tried at a court martial, should be delivered to the accused person, previous to his Trial?

It is in no case proper, that copies of the Affidavits in support of a charge against a person to be tried at a court martial should be delivered, or shewn to the Person accused, previous to his Trial.

G Paul

Wm Strahan

Prisoners Sept 16 1846

Can the Court, legally defer passing Sentence upon Capt Burvish, till they have gone through the whole Evidence relating to all the accused Officers? And if they can, and should so defer it, can they consider the Evidence given at the ensuing Trials, as in any manner affecting Capt Burvish, and admit the same to have any weight, in the forming their Judgement & Sentence upon his conduct -

We have considered this Question, & are of Opinion, that there is no Law which prohibits a court martial from taking time to give a Sentence, but we apprehend it to be most proper and most agreeable to practice, to give a Sentence upon a Trial for a Capital Offence, before the Court proceeds to any other Trials for Offences of the like nature.

And we are very clearly of Opinion, that they cannot consider the

34 Evidence given at any ensuing or preceding Trials, as in any manner affecting Capt^m Burrish, and that they cannot by Law admit such Evidence to have any weight, informing their Judgment, and giving Sentence upon him

G. Paul
Wm. Shathan
Geo. Lee

Dr. Commons October 11. 1755.

As I am informed that the Instructions of the Judge Advocate are to examine the Witnesses and take their Depositions in Writing, I am of Opinion, that regularly he should not accept draughts of Depositions ready prepared, but ought to examine the Witnesses Viva Voce to such Matters as are Material, and then to take down the Depositions in Writing. But if for Convenience, it has been the Practice to indedge the the Party's so far as to permit Draughts ready prepared to be brought. I am of Opinion the Judge Advocate may examine such Witnesses Viva Voce to such Matters as he shall on perusing the Draughts judge necessary or proper to explain what is said, or to bring out the whole truth of what is Material to the Charge or Defence, and as the Facts shall come out on such Examination, to add to, or vary the Draught according to the Evidence of such Witness, taken altogether. But such Draught, or Deposition so received should be signed by the Witness. In this Opinion I take it for granted, it is not the Practice to Examine the Witnesses upon Interrogatories in Writing settled previous to the Examination

C. D. Ryder
5 May 1756 -

Sir

I have laid your Letter of Yesterdays Date before my Lords Commissioners of the Admiralty, inclosing a Letter from Adm^r Matthews, delivered by him yesterday to the Court Martial at Deptford, wherein he Objects against Capt^m Legge, Capt^m Renton, and Capt^m Hamilton, being admitted to sit as Judges or Members of that Court for enquiring into the Conduct of himself, and others in the late Action in the Mediterranean ^{between} His Majesty's Fleet and the combined Fleets of France & Spain off Toulon, with the Reasons upon which his said Objection is founded, and you having signified, that the Court Martial desire their L^{ds} Determination upon the Validity of the said Objection, Their Lordships Command me, in the first place to take Notice of the Difference between your Letter, and that of the two Prosecutors, who in their Letter of the same Date say, That the Court looking upon that Objection of no Avail had proceeded to Read the Charge against Admiral Matthews after the said Objection, which is in Effect over ruling it.

But lest any doubt should still remain upon the Minds of any of the Members of the Court, their Lordships think proper to enter into a more particular Discussion of the Reasons alledged by the Admiral for his Objection which are

1st --- That by an Ancient and Established usage such Captains only have been admitted to sit at Courts Martial, whose Ships were then within the district & Limits of the Command of the Flag Officer, or Commander in Chief who presided at such Courts Martial.

2nd --- That the three Captains objected against, are now Commanders of Ships that are out of the District or Limits of the said Commander.

36) In Answer to which, their Lordships direct you to Inform the Court, that the Act of Parliament, of the 13. Car 2. which is the foundation of Material Law, and for trying Offences committed at Sea, mentions no such Restriction, & says only, that Courts Martial shall consist of Commanders & Captains.

In foreign Parts indeed Courts Martial do generally consist of Flag Officers and Captains of Ships then under the command of the President which usage is the Effect of necessity; but here at home Captains of Ships have often been called from other Ports to the Port, where the Court Martial is held; indeed almost always, when the Trial has been upon any matters of Importance; Some Instances of which go here inclosed.

As to his third Objection, That the said Captains are not in the actual Command of their Respective Ships, but that the said Ships are Commanded by other Commanders appointed for that purpose; Their Lordships direct you to Inform the Court, that the Case of those three Captains is the same as of those Captains who appear (by the Instance inclosed) to have repaired from distant places to the Port where the Court Martial has been assembled, the Command of their Ships being left in other hands during their Absence: That in Peace, and in Port, it has been commonly judged sufficient, to entrust the Command of Ships to the first Lieutenant, during the Absence of the Captain, but in the present Circumstances of Affairs their Lordships did not think it fit for his Majesty's Service to suffer his Ships to lie idle in Port, because of the Absence of their Captains at a Court Martial, but to depute others to officiate for them, by Order only, which is so far from divesting their proper Captains from their Real Command, that one of the Officiating Captains is only a Master and Commander, and will not take post; notwithstanding he now acts in the Command of a Ship of 60 Guns.

As to the Admirals Question desiring to be Informed by the (37)
Court, before they proceeded on his Tryal, who is his accuser, and by
whom the charge against him was drawn and prepared, their
Lordships Commande me to send you the inclosed copy, of an
Address from the House of Commons to the King dated 11 April 1765,
which whoever has read, cannot but be much surprized at the
Question especially from a Member of the House of Commons.

I am

Sir

Your very humble Serv.

Thos. Corbett,

To the Right Honble the Comyns for executing the
Office of Lord High Admiral of Great Britain.

May it please your Lordships.

In humble Obedience to your Lordships Commands signified
to me by Mr Winnington your Lordships Solicitor, referring to me a
Letter from Mr Atkins, Deputy Deputy Judge Advocate of the
Fleet, setting forth, That upon a Debate a certain Matter was put
to the Vote at a Court Martial, upon which there appeared to be
equal Numbers the Presidents included, viz. ten against ten,
upon which a Motion was made and agreed to, that since an
equality of Votes may happen in some material Cases, Therefore
that a Letter should be wrote to your Lordships, for your Opinion,
what may be proper to be done when a Matter is put to the Vote,
and the Numbers are equal on both sides, the Presidents included;
Thow that Matter is to be determined; directing me to lay before
your Lordships my humble Sentiments upon this Case.

30) I with great Submission certify your Lordships, that by the
Laws of the Realm when there are a Number of Judges appoint-
ed to Adjudge & Determine a point of Law or Fact, the same
must be settled & decreed by a Majority - In the Kings Bench,
Common Pleas, & the Exchequer, there are in each year Judges; the
Chief is vested with a Superior Dignity, not much unlike a President;
but in Decisions, if two Puiſſe Judges dissent from the Chief & one
Puiſſe Judge; no Judgment can in such case be given. In the
Court of Delegates, when the Lord High Chancellor appoints a
Number of Judges, if at any time upon an Ordinary Act or a
Sentence, the Court happens to be divided, no Order or Sentence
can be obtained, tho' there is always a Person of superior Distinction
placed at the head of every such Commission of Delegates.

I therefore conceive, that a Court Martial should observe the
same reasonable Rules that other Courts of Justice comply
with: The Point at Issue may be reconsidered by the same
Judges, & if they shall alter their Opinions, that may induce a
final Determination of the Point in Question; but if the
several Members of the Court Martial adhere to their first
Opinion upon which there is an Equality, I think the
Question must remain undecided.

I am &c.
G. Paul

By the Commons,

June 28-1746

To the Right Honble the Commis^{rs} for
Executing the Office of Lord High Admiral of
Great Britain -

May it please your Lordships

In humble Obedience to your Lordships Commands,

Signified to me by Mr. Wrennington your Lordships Solicitor, referring ³⁹
to me a Letter from Mr. Athens Deputy Judge Advocate ^{The Court},
Setting forth, That upon a Debate, a certain matter, was put to the
Vote, at a Court Martial, upon which there appeared, to be
Equal Numbers, the President, included viz: ten against ten, upon
which a Motion was made and agreed to, That since an Equality of
Votes may happen in some Material Cases, therefore that a Letter
should be wrote to your Lordships, for your Opinion, what may be proper
to be done, when a matter is put to the Vote, and the numbers are Equal
on both sides, the President included, and how that matter is to be
determined, directing me to lay before your Lordships my humble
sentiments upon this Case.

I with great Submission certify your Lordships that by the
Laws of this Realm when there are a number of Judges appointed
to adjudge and determine, a point of Law or Fact. The same must be
settled & decreed by a Majority. In the Kings Bench, Common Pleas
and the Exchequer, there are in each four Judges the Chief is vested
with a Superior Dignity, not much unlike a President, but in De-
cisions, if two Puisne Judges dissent from the Chief and one Puisne
Judge, no Judgment can in such Case be given. In the Court of
Delegates, where the Lord High Chancellor appoints a number of
Judges, if at any time, upon an Ordinary Act, or a Sentence, the
Court happens to be divided, no order or Sentence can be obtained,
tho' there is always a person of superior Distinction placed at
the Head of every such Commission of Delegates -

I therefore conceive, that a Court Martial should observe the
same Reasonable Rules that other Courts of Justice comply with.
The point at Issue may be reconsidered by the same Judges, and if
they shall alter their Opinions, that may induce a final Determin-
ation of the point in Question, but if the several Members of the
Court Martial adhere to their first Opinion upon which there is
an Equality, I think the Question must remain undecided.

Dr Commons June 28th
1746

I am &c
C. Paul

Saml's Office 25 Jan^y 1717

Sir/

Inclose you will receive two Papers the one being Propositions for the better regulating the Proceedings upon Courts Martial in the sea Service, to be brought by way of Bill into Parliament; the other being rules for the more orderly proceeding at Courts Martial, to be settled by the King in Council; My Lords Commissioners of the Saml's desire you will peruse and give your Opinion of them and they recommend your sending for the Deputy Judge Advocate, and such of the Commanders of different Ships at Portsmouth, as you think proper to confer together upon the Subject: and their Lordships would be glad of your opinion therein (as also of the Alterations or amendments you judge proper) as soon as conveniently you can, that no time may be lost in bringing the matter into Parliament I am

Sir

Wm^{ble} Sam^l Stewart, Your most humble Servant

Thos Corbett

Propositions for the better regulating the Proceedings upon
Courts Martial in the sea Service

To be brought in a Bill into Parliament

When an Order or Warrant is granted by the Lord High Admiral, or Lords Commis^s of the Saml's to a Commander in Chief of a Fleet or Squadron to hold Courts Martial in Foreign Parts, if the said Commander in Chief shall dye, during the Expedition, or that an End should be put to his Command, from any other Cause; the next Senior Officer shall have Power to hold Courts Martial by Virtue of the same Warrant; and soon for as many Successors as shall happen become to the Command of the said Fleet or Squadron, during the Expedition.

2

41

When a Commander in Chief of a Fleet or Squadron in Foreign Parts, shall detach part of that Fleet or Squadron on a separate Service, he may empower the Chief Commander of the said Detachment to hold Courts Martial during the time of their Separation, or until he comes under the Command of a Senior Officer, or returns to Great Britain.

3

The Lord High Admiral, or Lord Commis^r of the Admir^y, may appoint any Flag Officer or Captain of any of His Majesty's Ships, in His Majesty's Ports in Great Britain, or Ireland, whether he commands in Chief in that Port, or not, to hold Courts Martial, which Officer shall preside at the same himself, and not depute them, or any other Officer to do it. The Commander in Chief in Foreign Parts shall likewise preside at all Courts Martial, unless he sees cause to have a Court Martial held for trying any Person for his own Judgement, or Observation, in which case, he shall depute the next Officer to him in Command to hold the said Court.

When there are not Captains enough of Post Ships, to compose a Court Martial, the Commanders of small Ships and Vessels not taking Post, shall be allowed to sit at a Court Martial.

Three shall be sufficient to compose a Court Martial in Cases not Capital, when there is not a greater Number to be had; But in any Case whatever, the Number shall not exceed thirteen, who shall consist, of Flag Officers, first Captain of the Admiral, and Senior Captains.

No Officers capable of sitting at a Court Martial shall be disabled therefrom by being Summoned as a Witness, if there is not a sufficient Number of Officers left to compose a Court, but if either the Complainant, or the party tried, shall desire that

a

42) Member of the Court, be asked any Particular Question relating to the Facts before them, he may answer to the same standing up in his Place, { but } 2^d. whether with or without Oath, without Oath.

7
If a Complaint is made to a Captain or Commander, of Faults, or Offences committed by a Person, or Persons in the Ship, under his Command, and he shall thereupon apply to the Lord High Admiral or Lords Commissioners of the Admiralty, or to his Commander in Chief, to have the same enquired into at a Court-Martial, it shall not disable him from sitting at the said Court-Martial, if he is not personally concerned in the Matter of the Complaint, and provided he does not act as a prosecutor by collecting the Evidence, and Exhibiting a List thereof, which is to be done by the Complainers, or by some other, Person of the Ship.

8
When a witness is called in to be examined, the Judge Advocate is to Administer the following Oath to him, viz^t

You shall well and truly answer, to the best of your Knowledge, all such Questions as shall be asked of you, relating to the Matter now before the Court, .

To help you God.

9
If a Witness behaves disrespectfully, or prevaricates with the Court, they shall have full power to punish him for his Contempt, by Fine or Imprisonment.

10
The Court-Martial to have power to punish Offences committed on Shore, relating to Matters of Discipline only.

11
The Court-Martial to take an Oath of Secrecy.

The seventh of the Act 13. Car: 2 allowing to plunder Prizes from the gun deck upwards, to be repeated. -

Rules for the more Orderly proceedings of Courts Martial in the Sea Service to be Established by the King in Council.

1

When any Person complains of another to the Lord High Admiral or Lords Commanders of the Admiralty, he is to do it in Writing, and the Admiral or Commander who shall be appointed to enquire into the same at a Court Martial is to order the said Complaint to be shewn to the Party accused, and reasonable time allowed him to prepare for his Defence.

2

The Judge Advocate is to summon such persons to be witnesses in support of a charge, as the Accuser shall Judge to be Material, not exceeding five or six to each point contained in the Charge, and also such as the Accused Person shall desire not exceeding the like proportion

(3)

Upon the day appointed for Trial the Signal is to be made, on board the Ship where the Court is to be held, at Eight of the Clock in the morning, and the Court are to begin the Trial at Nine at farthest, and sit until Six in the Evening, unless the Trial be concluded sooner; But in case it shall not be finished in one day, the Court is to meet from Day to day at the same hour in the morning, and continue sitting till the same hour in the Evening, untill the Trial shall be over. The President is to take care that Decency and Order be preserved by every Member of the Court.

When the Court are met, the accuser is to be admitted, and the accused Person brought in, and all Persons, who will, may come in as spectators. Then the Warrant Authorizing the Court to meet, is to be read, when that is done, the Judge Advocate is to administer the prescribed oath to the Jurors, and then to produce and read the charge against the accused Person; Then the Accuser is to deliver in Lists of the Witnesses in Support of the Charge, and what Points or Articles each Witness is produced to support. The Court are then to examine them to such points only, and when they have done the accuser may ask what farther Questions he judges fitting. Then the accused Person may cross examine by asking what Questions he judges proper upon the same Points. The Court and Accuser may then ask what farther Questions may be occasioned by the Answer of the Witness upon his cross Examination.

B

When the witnesses in Support of the Charge are all examined, the accused Person is to give in Lists of his Witnesses, and to what Points or Articles of the Charge they are summoned to answer, Then he is to call in his Witnesses, and to Question them to those Points: The Court and Accuser may cross Examine upon the same Points. Then the accused Person may ask what farther Questions he shall think necessary from their Answers on their cross Examination.

H

If the accused Person shall insist on the Examination of a greater number of Witnesses, than the Court shall think reasonable, and the said Court shall be unanimous in Opinion that the same is unnecessary, they may over-Rule it, unless he shews, that he designs to call them upon new Matters, relative to the Charge, and not before mentioned.

7

When the Accused Person's witnesses have finished, no more witnesses are to be examined; unless in the course of Evidence for the Accused Person new Matters shall have been started; in which case the Accuser may call a witness or witnesses to be heard to invalidate or set such new Matter in a Different Light to what it may then appear in.

8.

If a Question proposed to be thought improper by any Member, the Opinion of the Court is to be taken thereupon; and according as the Majority shall agree, it is either to be put or dropt.

9

The Evidence is to be taken down in Writing by the Judge Advocate, who is to Minute the Substance of the witnesses' Answer to a Question, and Immediately read the same to the Court and witnesses, that if he should make any mistake, it may be forthwith corrected.

10.

When the Evidence is closed, the Accuser, Accused, witnesses, and Spectators, are to withdraw. Then the Court are to consider the Evidence, and such Questions to be put as the Court shall agree upon, in order to determine the Innocence or Guilt of the accused. If found guilty, in whole or in Part, then the Court are to consider, and agree under the Censure of what Act or Clause of an Act of Parliament such Guilt brings him, and to determine the Punishment agreeable thereto.

11.

If the Members of the Court disagree upon any Point, the matter is to be determined by a Majority of Voices; and if upon any division, the Votes should be equal, the Point may be reconsidered; but if an equality of Votes should still continue, the matter must remain as it was, before the Question was put. If an Equality should be upon a Question whether Guilty or not, and such Equality

46) should continue after a Reconsideration, the most favorable Construction is to take place by an Acquittal, with regards to the point in question.

12

When the Sentence is drawn up, and signed by the Court, all Parties are to be Readmitted, and the Judge Advocate is to pronounce the same by Direction of the President.

(13)

The Judge Advocate is to insert in his Minutes all Questions arising, and put in any Debates, or Deliberations of the Court, and to note if the same were agreed to Unanimously, and if not, what the Numbers were in the Affirmative and Negation of each Question. He is to communicate to the Court whatever Occurs to him that may tend to their Information in the matter before them.

(14)

When a Complaint is made to the Commander in Chief in a foreign Voyage, praying that a Court Martial may be held to enquire into the same, the said Commander may if he Judges proper, cause depositions to be taken of some of the most material witnesses, in Order to Judge whether there be ^{foundations} sufficient for holding a Court Martial; but the taking Depositions previous to a Court Martial, is not necessary, nor shall any Depositions be read at a Trial as Evidence, whether the witnesses be present or not.

(15)

When a Captain shall see Cause to confine an Officer, at a place where there are not Officers enough to hold a Court-Martial, he shall, as soon as he comes in the way of a Court-Martial, immediately complain of the Officer confined, to the Lord Commissioners of the Admiralty or to the Commander in Chief, and set forth his reasons for confining him; upon which

The Commander in Chief, if it be in foreign Parts, shall enquire⁴⁷
into the matter at a Court Martial as soon as possible; and if it
shall appear to the Court, that the Captain has abused his Power,
by confining the Officer without just or adequate cause, or treated
him over hardly in his confinement, they may punish the Captain
for the same

If a Member of a Court Martial falls sick, it shall not
retard the Proceedings of the Court, if there are enough to compose
a Court —

If a Judge Advocate falls sick, the Court are to chuse
another immediately. —

st
1 Feb^y 1747

Mem^o. On Monday the 1st Feb^y 1747 Met at Admiral
Stewarts Lodgings viz^t —

Admiral Stewart

Lt. Peter Warren

Capt. Roger Martin

Ln^o, Putcharde

Piercy Brett

Lt. Bently

Mr Parry

Geo Atkins D. J. A.

M^r Stewart communicated to the Gentlemen a Letter he
had received from M^r Secretary Corbett dated the 25 Jan^y.
inclosing Proposals for the better Regulating the proceedings
upon Courts Martials which I read

60 / Read the propositions for the better Regulating the
Proceedings upon Courts Martial in the Land Service

First Article

Unanimously approved

Second

Unanimously approved

Third

Unanimously of Opinion that the Observation on this
Article is just, and they are of opinion that the Act of the 18th
Geo 2^d should not be repeated

Fourth

Unanimously approved

Fifth

Unanimously approved

Sixth

Unanimously approved, If that Member be sworn

Seventh

Unanimously approved

Eighth

Unanimously of Opinion that the Oath as it Observes
is much more Expressive and binding than this proposed
therefore ought to be continued

Ninth

Unanimously approved

Tenth

Unanimously Approved

Eleventh

Unanimously Disapproved

Twelfth

Unanimously approved

Unanimously of Opinion that the Article proposed
for obliging the Members to Sign is necessary and wantg.

Jas Stewart Roger Martin. Percy Brett, Wm Parry
O Warren Geo Putschaw J Bentley Geo Atkins

Rules for the more Orderly Proceedings of Courts Martial in
the Sea Service to be established by the King & Council - Read

Article 1st

Unanimously Disapproved and of Opinion a charge in writing
ought to be given by the Judge Advocate to the Prisoner as
has been the common practice

Second

Unanimously approved

Third

Unanimously disapproved, think no time should be prescribed
for sitting for assembling, it is already - viz - In the Forenoon
and think that the Court ought to adjourn when it appears
reasonable to them

Fourth and Fifth Articles

Are both Unanimously disapproved, as far as they Clash
with the Second Article as per Observations

Sixth

Unanimously approved, with the alteration in the Obser-
vations

Seventh

Unanimously Approved

Eighth

Unanimously approved, as it has been constantly
the practice

Ninth

Unanimously approved as it has been constantly the
Practice

Tenth

Unanimously approved

Eleventh

Unanimously approved

50)

Twelfth
Unanimously approved

Thirteenth
Unanimously approved

Fourteenth
Unanimously approved

Fifteenth
Unanimously approved, when explained as per Order

Sixteenth
Unanimously approved

Seventeenth
Unanimously approved

Jas Stewart
P. Warren
Roger Martin
The Pritchard
Piercy Bull
J. Bently
Mr Parry
Geo Atkins

Sir
Admiralty Office 9 Sept 1787

I have received, and read to my Lord Comps^r
of the Admiralty, your Letter of yesterdays date, desiring
two months leave to go to Bath; in order to take the
Waters for the Benefit of your health; and I send this
to acquaint you, that their Lordships give you the
leave you desire, for that purpose. I am

Sir

Your very humble ser^t

W Geo Atkins, Clk of the Cheque & Exchequer
at Portsmouth

Adm^l Office 18th November 1757 54

Sir/

I am Commanded by the Lords Commissioners
of the Admiralty to send you, inclosed, an attested Copy of
the Opinion of
his Majesty's Advocate General, Attorney General, and
Solicitor General, in relation to the Judge Advocates ask-
ing Questions of witnesses at a Court Martial. I am

Sir

W^m Atkins, Deputy Your very humble Servant
Judge Advocate at
Portsmouth

Thos Corbett

18 Geo. 2. An Act for the further regulating and better Go-
-vernment of His Majesty's Navies, Ships of War and forces
by Sea and for regulating the proceedings upon Courts Martial
in the Sea Service: It is among other things Enacted as follows
viz^t:

Copy -- That from and after the 1st Day of June 1755 it shall
and may be lawful to and for the said Lord High Adm^l
or the Commissioners for Executing the Office of Lord High Adm^l
for the Time being, And they are hereby authorized and
Impowered to grant Commissions to any Flag Officers, Comman-
-ders in Chief of any Squadrons of Ships, or Captains of His
Majesty's Ships, to call and assemble Courts Martial, consisting
of Flag Officers or Captains, to enquire and try any Person, or Per-
-sons whatsoever, for any Offences or Crimes against the Present
Act, or for any other Offences or Crimes which are cognizable
at any such Court Martial by Virtue of any other Law now
in being.

32 / And that at all such Courts Martial, to be held hereafter
or try any Person, for any such Offence or crime which shall
be committed after the Commencement of this Act, The Judge
Advocate of the Fleet, or the Person appointed to act for him,
for the time being, shall and may, and he, and they are
respectively ^{hereby} authorized and required, to collect the Evidence in
support of the Charge against the Person charged, to inform
the Court, and prosecute in his Majesty's Name; and for that
purpose it shall and may be lawful to and for the said Judge
Advocate, or such Person so appointed to act for him as aforesaid,
and he and they are ^{hereby} respectively authorized and required
by writing under his or their hands, to summon all and every
such Person or Persons, as he or they respectively shall be informed,
whose reasons to believe, can give any Material Evidence in sup-
port of the said Charge, to appear and be examined as a witness
or witnesses before any such Court Martial.

Whether in consequence of the Direction contained in the
aforesaid Extract, in the words that are underlined,

Query Is it the duty of the Judge Advocate, and has he thereby
a right, to ask the Witnesses, when under Examination upon a
Trial, such Questions as shall appear to him fitting and proper?

As the Judge Advocate is, by the Act, appointed and
obliged to prosecute on behalf of the Crown, and by his having
before collected the Evidence must be able to judge what ques-
tions are proper to be put to the Witnesses, we are of Opinion
he has a right to ask them all proper and fit Questions.

(True Copy) Tho Corbett

L^d Paul
2^d Ryder
10^m Murray
17 Nov: 1767

Sir/

This Afternoon Admiral Stewart, sent me a Copy of your Letter to him dated the 19th inst.

I humbly hope their Lordships have, & I should have Imagined that the Admiral (under whose Paper my Minutes have gone lately) had observed, that I have always minuted down the Substance of the Evidence given in Court. Viva Voce, for so I have always intended & Endeavoured to do. indeed I never had the Witnesses sign their Names thereto, because I thought, that such proceedings being signed by myself, were sufficiently authenticated. that they should be read to such Witnesses in Court & approved by him, I always thought necessary too. but if they are to be signed by each Witness, it will certainly protect & take up a great deal of the time of the Court, because they are taken down rough & in short Characters of my own, for Expeditions sake, & mistakes will happen in taking down matters in an open Court, from the Mouth of a Person, these upon reading over to the Persons are corrected, & Occasion consequently blotting & Erasures, which render the writing still more unintelligible to any one but myself, therefore I always transcribe them fair at home before I transmit them to their Lordships. but if each Party is to sign them in Court, they must be signed fair there, & will necessarily take up a great deal of time, more or less according to the Number of witnesses. I hope this Observation will not be thought Improper, & that I may Speedily have their Lordships further directions hereupon. I am &c.

Wmth Thos Corbett Esq.

54.

Portsmouth 21 November 1817

Sir

On the other side you have a copy of Mr Secretary
Corbett's Letter, with regard to the Minutes the Judge Advocate
is to take at future Courts Martial, which as it particularly
concerns you, I have judged proper to send you, and am,

Sir

Your most humble servant,

Geo Atkins Esq &c

Jas Stewart

Admiralty Office 19th November 1817

Sir

I have received, and communicated to the Lords Commanders
of the Admiralty, your Letter of the 13th Instant, wherein
you desire to know, with regard to the Minutes the Judge
Advocate is, by the Regulations, and Instructions, relating to His
Majesty's Sea Service, directed to take of the Proceedings of Courts
Martial, whether he is to minute down the Substance of the
Evidence given to the Court *via voce*.

In return to which, their Lordships command me to acquaint
you, that the Judge Advocate must doubtless take down the
Substance of the Evidence given by each Witness, in Writing;
and read the same to the Court, and then the Witness should
sign his Name thereto: And this seems to be sufficient for
the Summary Method of Proceedings intended by the Constitution
of Courts Martial without taking down every particular Question,
and Answer. As this is the consistent manner of Proceed-
ing, where any Minutes at all are taken, their Lordships do
not conceive how any thing less can be done, nor do they
apprehend, that this Method must necessarily be attended
with

Jas Stewart

with prolixity; especially at the Court, when they have examined so⁵⁵
many of the most knowing, creditable, and intelligent Witnesses
on each side, as shall be found to give them sufficient Satisfaction
in the matter before them, have it in their power to shorten, or lengthen
a Trial, either by a short or longer Examination of such greater
number of Witnesses as may be produced on either Part. I am
Sir

a Copy
Adm^l Stewart,

Your most humble serv^t
Tho^s Corbett,

Admiralty Office 23rd Nov^r 1747

Sir/ I have received and read to my Lords Commissioners of the
Admiralty your Letter of the 21st Instant, in return to mine of the
19th to Admiral Stewart, of which he has sent you a Copy. And I
am commanded by their Lordships, to acquaint you, that the
said Letter to the Admiral only contained their Lordships opinion
upon a Question he asked, in relation to taking down the Evidence
given before a Court-Martial; But that their Lordships do not thereby
prescribe any method to the Court, who are masters of their own
proceedings, and whatever method of taking Evidence satisfies them
the Lords have no objection to its being used. I am
Sir

Your very humble servant
W^m Cuthbert Dep^y Judge
Associate Presm^r Tho^s Corbett

Portsmouth Dock 11th December 1757

Sir/

When the Court met this Day some Doubt arose, upon which they debated upon the whole, directed me to refer the following Queries to you in order to have your Satisfaction thereon viz^t

First Query. if after the Evidence for the Crown is closed the Prisoner told so, put upon his defence Some or more of his Evidences Examined; The Court can upon new Matter arising to the charge, call in fresh Evidence for the fi: never before Examined by either side, or can proceed to a farther Examination of such as have been E^d. before the Prisoner was put upon his Defence.

Second Q^y whether and the Complainant ought to be in C^t: since the Judge Advocate is by the late act appointed Prosecutor for the Crown,

Third If he may be in Court what part is he to act?

Sir Edw^d Hawke is Complainant in the Case of Capt. Fox he gave in a List to me of his Evidence, yet is he admitted into Court & suffered to ask Questions.

Fourth Q^y Is this proper or not —

I have offered my humble Opinion ther^t: that the Evidence on either side once closed cannot be called upon again, as I apprehend no new Evidence called in. because it occurs to me that calling in new Evidence after the Prisoner has Entered upon his defence may be in some cases very injurious to him, & he may be made use of as his own Accuser it would greatly protract the Proceedings, which ought to be in a Summary way.

I humbly apprehend that a Complainant may be in § 57
either ask Questions himself, or put the Judge Advocate upon
putting such Questions to the Evidence as may appear to him
Material.

I am very diffident of my own Ability to determine
Points of this kind. The Court were desirous of having His Maj.
Advocate General's Opinion thereupon, & tho they don't stop pro-
ceeding til they have an Answer yet both they & I should be
glad to have it as soon as conveniently may be I am

Sir &
Honble Tho Corbett Esq.

In the present case. The Captains of St. Paul's Hawks Squad.
refuse to sit at a Council of war, or to rank wth Capt^m Fox, & give
their Reasons, St. Paul's hereupon confines Capt^m Fox & Exhibits ar-
ticles against him, which are to be proved chiefly by those Capt^{ns}.
I don't see in my poor Judgement, why this disqualifies St. Paul's
Hawks for sitting as a Judge.

A Captain is told by his Officers, that such a Person has committed
Murder or Sodomy, or Embezzled His Majesty's Stores or deserted,
or upon many such like occasions, I may to know if that
Captain may not sit at the Court Martial, because such
complaint has been handed to their Lordships through him

Sir
Admiralty Office 14th December 1747

Having laid before my Lords Commissioners of the
Admiralty your Letter of the 11th Instant, containing certain
Queries with relation to the methods of Proceeding for a Court
Martial in the cases therein Mentioned, and desiring the
Opinion of the Kings Advocate General thereupon, I am

50 I am commanded to acquaint you, that their Lordships do not think proper to interfere with the Proceedings of Courts Martial.

But as you express a want of Information, I will venture to tell you what I can gather from the Sentiments of those I have conversed with, which are, that the Office of a Court-Martial being to come at the Knowledge of the Truth of the matters under their Enquiry, and Examination, and they being a Court of Honour, and not tied down to the strict forms of other Courts, they are to follow their Judgement in using proper methods for answering the Ends of their Meeting. I am

Sir

Your very humble Servant

Watkins Dep^y Sec^y: Adm^l:

Portsmouth Thos Corbett

Sir Admiralty Office 11th Decem^r 1757

My Lords Commissioners of the Admiralty having under Consideration to bring a Bill into Parliament for the better settling & Regulating the Methods and proceedings at Courts-Martial, and clearing up the Doubts and Difficulties now attending the same; I am to desire that you will consider, and let me know any Points that may occur to you which in your opinion may desire to be rectified; and to favour me with your Opinion thereupon, as soon as possible I am

Sir

Your very humble Servant

Watkins at Paton's

Thos Corbett

This Nulls the Clause in the Act of Parliament 16 of King Geo. 2nd which absolutely disqualifies the Person, who has the Power to assemble Courts Martial, from presiding thereat. the reason is supposed to be, to prevent an undue influence which a Commander in Chief may be supposed to have, especially at a war. & therefore seems very Equitable.

b

If the Answer made by the Member of the Court to any particular Questions, is to be taken as Evidence, surely it ought to be upon Oath.

d

In my humble Opinion there cannot be a bolder Oath administered to a Witness than the present viz^t. "The Evidence you shall give to this Court, shall be the Truth, the whole truth and nothing but the truth. So help you God. Or 'You shall true Answer make to all such Questions as shall be asked you, you shall speak the Truth, the whole Truth & nothing but the Truth. So help you God."

In this letter, it w^d appear that the Evidence is only to answer such questions

107 as may be put to him - and as to the matter of which he may be ignorant - he may choose to be silent - which is perfectly consistent with the Oath

This Nulls the Clause in the Act of Parl: the 6. of King George the first which surely was a very useful one, & probably may have prevented several murders, Thefts Embez. &c.

N.B. I mistook, thought it repealed, the Clause quoted, but find it only to regard the oath of Discipline as now at home, & am convinced it is a very useful and necessary article; what is this Oath of Secrecy w^d be? since all the Material parts of every witnesses declaration, & all the Questions arising out, in any debates or deliberations of the Court, are to be inserted in the public Minutes, as §. 13 Article of the Rules.

Is not the present Methode better, when the Judge Adv^{ce} by Order of the Commander in Chief. Collects every Article of the Complaint in writing & causes it to be det^d. to the Prisoner, at the Charge against him, & a reasonable time is allowed him to make his Defence thereto.

(2)

It might be very proper to restrain the N^o of Evidences pro & con. & the Judge Advocate ought timely to Summon them to attend the Court, at a certain time first, but how is he to do this according to the 18th Article; which says the accuser shall deliver in Lists of his Witnesses in Support of the Charge just before the Court, should proceed to the Trial & the Prisoner is to give in his Lists of Witnesses not untill the Witnesses in Support of the Charge are all examined. Now then are they to be Summoned, this I much apprehend to be a Mistake.

(3)

I do apprehend this may be trying a Court up to too strict & too long an Attendance. Nine hours is too much, especially for the Judge Advocate who is to take the Minutes, & according to this the Court cannot on any Occasion what ever Adjourn, which may at one time or other be attended with ^{all} consequences.

(4)

Would it not be better to say in this Case, & the Majority of the Court shall be of Opinion, that the same is unnecessary. It is very hard to get an unanimous resolution of a Court, but does not this Article clash with the 2^d Article.

15

Might it not be proper to ascertain the Punishment the Captain shall be liable to, who confines his Officer without just or adequate Cause, or treats him over hardly during

such confinement, & might it not be Equitable to furnish such
Captain by Mulet, that to go to the Injured Persons, by way of recovering
Damages, If the Confines appears to the Court, to be very injurious.
In some Cases a Reprimand from the President may be sufficient.

Might not an Article be proper to be added to the Bill proposed.
To oblige all the Members present to sign the Sentence, whether they
assent to, or dissent from it.

Observations. on the Bill proposed to be brought into Parliament
on the Rules to be proposed to the King & Council. by Geo. Atkinson Esq.
Sud: Advocate: of His Majesty's Fleet.

Bill (3)rd

This Nulls the Clause in the Act of Parliament 18 of King
George the 2nd which absolutely disqualifies the Person, who has the
Power to Assemble Courts Martial, from presiding thereat. The reason
is supposed to be, to prevent an undue Influence which a Commander
in Chief may be supposed to have, especially abroad, & therefore seems
very Equitable.

(6)
If the Answer made by the Member of the Court to any partic-
ular Questions, is to be taken as Evidence, surely it ought to be upon
Oath.

(8)
In my humble Opinion there cannot be a better Oath
Administered to a Witness than the present viz^t The Evidence
you shall give to this Court shall be the truth, the whole truth
and nothing but the Truth. So help you God. Or. "You shall
true Answer & make to all such Questions as shall be asked you,
you shall speak the truth, the whole truth and nothing
but the truth. So help you God.

NB. I mistook, thought it repealed the clause quoted, but find is only ^{to} regard Breach of Discipline on Shore at home, and am convinced it is a very useful necessary Article

11.

What is this Oath of Sincerity to be? since all the material parts of every witnesses Declaration, & all the Questions arising & put, in any debates or deliberations of the Court are to be inserted in the publick Minutes. as § 13 Article of the Rules

Might not an Article be proper to be added to the Bill proposed. To oblige all the Members present to sign the Sentence, whether they Assent to, or dissent from it.

Rules..

(1)

Is not the present Method better, when the Judge Advocate by Order of the Commander in Chief, collects every Article of the Complaint in writing, & causes it to be delivered to the Prisoner, as the Charge against him. & a reasonable time is allowed him to make his Defence thereto.

(2)

It might be very proper to restrain the Number of Ordinances pro & con, & the Judge Advocate ought timely to Summon them to attend the Court at a certain time fixt, but how is he to do this according to the 11th & 15th Articles, which says, the accuser shall deliver in Lists of his witnesses in Support of the Charge just before the Court, should proceed to the Trial; & the Prisoner is to give in his Lists of witnesses not until the witnesses in Support of the Charge are all Examined. How then are they to be Summoned. This I must apprehend to be a Mistake.

I do apprehend, this may be trying a Court up to too strict & too long an Attendance. Nine hours is too much, especially for the Judge Advocate who is to take the Minutes, & according to this the Court cannot on any Occasion whatever adjourn; which may at one time or other be attended with ill consequences.

b.

Would it not be better to say in this Case, and the Majority of the Court shall be of Opinion, that the same is unnecessary. It is very hard to get an unanimous resolution of a Court.

15.

Might it not be proper to ascertain the Punishment the Captain shall be liable to, who confines his Officer without just or adequate Cause, or treats him over hardly during such confinement, & might it not be Equitable to punish such Captain by Mulet, that to go to the Injured Persons, by way of recovering Damages. Here follow the Observations I made on the proposed Bill & Rules.

Sir

After expressing my wishes for your health, I am in the first place to beg the favour that you will excuse me for the liberty I take in presuming to trouble you; and secondly to make you a tender of any Services it may be in my power to render you here.

Since you was at Portsmouth I have had the honor by the recommendation of Mr. Keppel to officiate as Judge Advocate at every Court Martial that has been assembled here, and as I stand fair with most of the Gentlemen of the Navy, I flatter myself my Sincerity and Endeavours to please, may render me not quite unworthy of a continuance of their Countenance and Kindness.

(64)
I was for some time in doubts how and what I was to be paid for my Stationary, trouble and Attendance, but finding by a letter from you to the late Mr. Rogers that it was to be by certificate from the President, I procured them and inclosed them to Mr. Cleveland.

As I had seen a letter from Mr. Cleveland to Sir ^{John} Murray, Clerk who officiated before me, that he should be allowed ten days for each Court Martial, I flattered myself their Lordships would have been pleased to allow me after the same Rate for 5 Certificates. I so inclosed to Mr. Cleveland but found myself mistaken by receiving a Bill for no more than £15. 1. 0 Stationary included. However I concluded it to be the Rate and was far from thinking of a trifling gratuity.

About 3 or 4 months afterwards I had eight Certificates more which I inclosed to Mr. Cleveland as before and soon afterwards I had a Bill made out but for £16 for eight which was but £1 more than had been allowed me for five.

This chagured me much, as it would not be worth my while to attend to the Business of a whole Court Martial by summoning the witnesses (which is generally an Expence to me in the Article of Postage) attending the Court, copying the Minutes twice, and the Sentence twice or thrice, and finding Stationary for £2. especially as I have been undertaken to the Gentlemen to be always ready when wanted, and to make all other Business give way to that.

I have made an Enquiry at the Army Office and they told me, that it must be owing to the times of the Certificates running into one Account, if that is the case it will be almost a constant Objection to my receiving what their Lordships intend as a compensation by £1. for Ten Days. As the Gentlemen here when the Service requires their strict Attendance, make it a Rule to postpone Court Martial till they have two or three that they may begin

early, ~~at late~~, dispatch the whole, and spend but a day at them
this was the case in some of the Eight certificates abovementioned, and
some of the times, as the Trials were two or three of a day consequently interfere
with each other

If there are three Trials there is three times
the trouble the Summons, Minutes Attendance and Sentence.
must be equally long and entire, and therefore I am willing
to think, that the profit should be equal and entire too

A small probability their Lordships, upon these Matters to your
Determination, I take this liberty to state my Situation to you,
and to intreat that you will be kind enough to consider it

If it is not with you to determine, you would greatly
oblige me by favouring me with a line whether you think it
prudent or not, for me to state this Affair to their Lordships
in a letter to Mr. Bertland, as however inconvenient it may
be to my other Business, to be always ready to attend
when called on to officiate, and make ^{I shall} it my Study to act
with Candor & Care - I flatter myself that I should on this
Occasion be considered in a rather more favorable light than
those who only casually attend

I repeat my wishes that I may stand excused for
this Trouble, I should consider myself greatly obliged to you
for the favor of a Line in answer hereto and am with Truth
& Respect Your most Obedt. & Obedt. Servant
I B

Portsmouth 16 Decr 1747

Sir

Mr. Corbett has wrote me a Letter, by the direction
of their Lordships, to acquaint me, that they have it
in consideration, to bring a Bill into Parliament, for the
better settling, and regulating the Methods and proceed-
ings at Courts Martial, and clearing up the doubts, and
Difficulties now attending the same; and he desiring
that I

66 That I would consider, and let him know, any Points that
may occur to me, which I think may deserve to be
rectified, and to let him have my Opinion thereupon as
soon as possible, I have wrote a Letter upon this Occasion
to Sir Peter Warren, & beg'd that he would be pleased to com-
municate the same to the members of the Court, he is now
presiding at, in order to its being taken into Consideration,
and their giving me an Opinion with regard to any
Amendment of the present Methods, and proceedings, I
am likewise to beg that you will take the same into
Consideration & let me know whether any points occur
to you, which in your Opinion deserve to be rectified.
You will please to let me have your answer as soon
as possible, and believe me always.

Sir

Mr Atkins Esq: &c. Your most humble Serv^t.
Jas Stewart

Sir

Portsmouth Dock 18 Dec: 1747

In Answer to your Letter of the 11 I beg leave
to offer my humble Opinion that if some Summary
way could be pitched upon to shorten the Proceedings of
Courts Martial it would be very beneficial to the Service &
to point out to you, Two means that Occurs to you, which
if put in Practice might effect in some measure at least
viz^t the Court being sworn, the several Orders fees and Charges
read, the witnesses being all present, I would propose that
the witnesses be Ordered to withdraw, & that the Court do then

66

consider & divide the Charge into as many Articles as it seems to contain.
A witness being called in & sworn he shall viva voce give the
the best Account he can of the whole Affair in Question, then I would
propose that the President puts to him distinctly the several Articles
of the Charge one after the other, beginning with the first, when the
Witness has given his Answer to that, the next thing will be to
give the Court your reasons for such your Opinion. & so on till the
Prisoner is to be examined, whom is behoves (in order to disculpate
himself) to ask all such Questions as may be tend to weaken or destroy
the force of these witnesses Opinion and reasons. & in the same manner
to go through with every Article and every Witness & there the matter to
rest, & this I think would be sufficient to convince every Gentleman in his
own Breast whether the Charge has been fully or in part charged
against the Prisoner, the present method of every Gentlemans being
at Liberty to ask as many Questions as he may think proper which
joyn'd is a rejoyn'd to the End of the Chapter is what protracts and
makes our present method so very tedious. In the present case. ^{Mr} Daw
Hawkes charge against Capt^m Fox consists I apprehend of three Arti-
cles. I advised ^{Mr} Peter Warren to follow this method & was pleased to
attempt it. by putting those Articles distinctly one after the other
to the witnesses, in this manner Capt^m or M^r such a One, you have
heard ^{Mr} Daw^s Hawkes charge against Capt^m Fox read, that charge
consists of three Articles which I shall put to you distinctly I pray your
Answer to them & reasons for those Answers, according to the best of your
knowledge & Observation, regarding always the Oath you have taken
viz^t.

President. Did Capt^m Fox in the Engagement on the 14 October last in
your Opinion properly come into the Fight or did he not.
A. He did, or he did not

President. Give the Court your Reasons for such your Opinion.
Here follow his Reasons.

by
Did Captain Fox on that day do his utmost to take kill &
Endamage the Enemy.

A. Yes or no.

Your reasons for such your Opinion
Reasons, Did Captain Fox on that day assist & relieve his Majesty's
Ships that were Engaged with the Enemy.

Yes or no.

Your reasons for such your Opinion
Reasons

Now if matters could have rested here, all would have been
soon over but is met with great Opposition. Gent^l urged that
the business of that Court waits come at length, & that every
Gentleman had a right to ask such Questions as he apprehended
related to that End, & this being the case at present. they went on.

Interrogating & cross Examining the witnesses that one would
have thought they were upon Trial.

The next thing to be rectified would be to restrain the n^o of
witnesses on both sides. There surely would be abundantly
enough to prove each Article (when they may be had for in
many cases such proof cannot possibly be had too being
deemed sufficient to convict in capital cases, in Common Law
the Prisoner to be allowed the like number in his defence to clear
himself of every part or Article of the charge. At present the Gent^l
are of Opinion that there can be no limitation to the n^o of the Prisoner
may produce for say they, you must either tell him that the
witnesses he has already produced have sufficiently cleared him
in the Courts Opinion of the several Articles of the charge against
him, otherwise you must suffer him to go on & call in hundreds
till he has so satisfied the Court, or himself gives it up,

by telling the Court he has no more to say. I Peter Warren 68
& I are of quite a different Opinion. Say I & Peter agrees with me
that the Prisoner may be told as in the present Case, but for
the n^o of witnesses you have already produced to the Court are
quite sufficient to guide them in their ^{future} deliberations, to form a
Judgment how far you have acquitted yourself of the several
Articles Exhibited, against you, & how far you may appear to them
guilty of those, or of part of those articles, & therefore unless you have
any witnesses to call upon to any fresh matter they think it loss
of time to dwell and confer on matters already so copiously discussed
on both sides the Question.

Dear Sir

I am very much obliged to you for the Favour of letting
me know your Sentiments with relation to Courts Martials.
I have shown your Letter to some of the Lords, who think your
remarks extremely just. I think something must be done to make
them conclude their Business at a Sitting, as Trials by Jury are. 2.
If any other matter occurs to you, pray continue to favour me
with them, for something must be prepared these holy days to lay
before the Parliament when they meet again.

Not knowing where Mr Larkins is, I shall be much Obliged to you,
if you will be so good as to send the inclosed to him when you have
a convenient opportunity. I wish you the Compliments of the
Season, and am

Sent to Office

Dear Sir

21 Dec 1747

Your Obedient

Humble Serv^t

Tho Corbett

Poolemouth Dock 27 Dec 1747

Sir/

I have the Honour of your Letter & send the Enclosed to Mr Larking.

Since you are pleased to indulge me with the Liberty of giving my sentiments with relation to Courts Martial, I will venture to offer something further viz?

If it may not be proper to restrain Gent^l from asking numberless Questions for their own & the Courts Information, might not the Judge Advocate stop taking minutes when he has taken the ~~names~~ Narrative of each Witness, & what they have to say to each Article of the Charge, then let the Court ask what Questions occur to them for their own Information. I would have them minute down, all the Questions asked, on the Prisoner upon his cross & examination in doing which it is to be supposed he would not fail using his utmost Effort, to discover if the Witness had made any Offer in his Evidence. This method would save a great deal of time. for much may be said in a short compass of time, but if that be to be taken down all verbatim in conversing, takes up a great deal, & takes up last minutes being above 200 Pages, or there as small hand, & close. the same rule to be observed in the Prisoners defence. If you say why! dont you do this? I answer, Every Gent^l says the Questions he asks are material & conducive to come at the truth, & insists on my taking them down, say I refuse, then he & perhaps the Court complain. How far may I depend upon being supported herein?

Give me leave to tell you an odd circumstance in the late Court Martial without naming Names? viz?

When the Court debated what Articles of War Capt Fox

fell under it was said he fell under part of the 12th Article,
which indeed the very words of the sentence most plainly point
out to them. A certain Gent^l said that since the C^t had
acquitted him of cowardice, & in their own Opinions of Disaffec-
tion, he could not be bro^t by any means under that Article,
I offered my Opinion that if any Officer did in time of Action,
withdraw or keep back, or not do his utmost to take his fire kill
& Endamage the Enemy, & assist and relieve all and every his Maj^{ty}
Ships, let the motive be Misconduct, Ignorance, or any other
whatsoever probably in my humble Opinion, fell under that Article
as if the Court were persuaded, it was the Effect of cowardice or Dis-
affection you will please to observe, there were but seven of that
Opinion.

I humbly Pray your Sentiments hereupon.

I pray that the four Queries contained in my Letter of the 11th
may be laid before D^r. Pall or some Eminent Civilian & that
upon any Doubt arising in the course of Trials, I may be
indulged with having a Solution of them from some of those
Gentlemen & that for this reason, because the more my Ignorance
the less weight, consequently my Opinion carries with it. I conceive
the more Knowledge I acquire, the greater weight & Influence
shall I have, I upon my word that would be a great means
towards shortening the Proceedings of Courts Martial. nor can I
humbly conceive how this could be censured into their Lordships
interfering with the Courts

I could wish that my later Minutes were laid before
some Civilian, in order to his pointing out the Superfluous
prolix part of them, I do humbly conceive he would curtail
them greatly & bring them within a much narrower compass.

I And this might be a foundation to build a new Bill upon,
which by the way I find many Gent^l averse to, the having of
a new Bill I mean Sir you will please to pardon these hints
which I set down as they occur to me, for Indeed I have not
time to afford this matter so serious a consideration as its
consequence demands & deserves. I am with great Esteem

Sir

Yours &c.

G. A.

Honble Thos Corbett Esq.

Portsmouth Dock 27 Mar 1749

Sir

I have two Cash Accounts in the
Navy Office viz from 1st April 1745 to 31 August 1747, which I
have not quite cleared, nor taken up my Imprest for, the
Navy Board have given me leave for a Fortnight to come to
Town to attend and put the finishing stroke to that Service
but I would not presume to ask their Lordships leave, while
the Trial of the Mutineers Onboard the Old Ag was depending
but Mr Stewart having been so good to show me your letter
of the 25th Inst; it does not thence appear probably that that
Trial will come on suddenly, I therefore humbly pray
their Lordships leave to come to Town for a Fortnight

I am Sir Your most Obed^t Serv^t

Honble Thos Corbett Esq.

G. A.

Adm^r Office 27 Dec^r 1747

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Sir

I am favoured with your Letter of Yesterday's Date, relating to Courts Martial, for which I am much Obliged to You, I am drawing up Heads to be considered in a new Bill, and ~~Heads~~ for the Regulations of Proceedings at a Court Martial to be settled by their Lordships in which you will do the just weight your Sentiments have with

Geo. Atkins Esq

Sir

Your most faithful humble St.
(The Earl of)

An Account of the proceedings of His Majesty's Ship Assurance from Tuesday Morning (the 24 April 1753) at 4 O'clock till when she unfortunately Struck and went on Shore at the Needles (Night)

At 4 in the Morning we saw the Isle of Wight which proved to be St. Katharine's point bearing N E by E Distance about 7 Leagues and at 1/2 past 4 Saw the Needles point bearing N by E Distance 5 or 6 Leagues Then altered the course from E to N E & N N E (having the tide of Ebb under our Lee) and stood in for the Needles with the Wind at N by E and N N W a moderate Gale & the Weather somewhat hazy, we continued to stand in so and found the tide of Ebb set us fast to the Westward, at 6 we Alter'd N E by E and sometimes N E then I call'd a man to the lead but had no Ground at 15 fathoms; we had very gradual Soundings, as 14, 13, 12, 10 1/2, 10-8-7, and soon, till we had a quarter less 15 fathoms I bid the man make haste and heave an other cast, for we were in the shoalest water we should have, but before he could heave another cast the Ship Struck, we was

43 When Steering N E & and the needles bore between the E S E
and E S. of us. Distance as near as I can judge a fables length.

John Webster a noted good Pilot for the Needles or any other
part of the Isle of Wight is confident that within this
four or five Years a great part of the Needles has washed away,
and has great reason to imagine that it has lodged on that
very Part of the Rock whereon his Majesty's Ship Assurance
struck Yesterday as he should not have been ^{under} any concern
in carrying a Ship of the same burden thro' that very Chan-
nel knowing that there was always three fathoms and three
fathom and a half at low water

Wednesday 25th April 1753
Signed in the Presence of
Jn^o Colman

John Webster -

Minutes at a Court Martial held on board His Majesty's Ship
The Cygnet in Portsmouth Harbour 11th May 1753 viz^t

Present

Honble Edw^o Boscawen Esq^r Rear Adm^l of the White Squadron
of His Majesty's Fleet Commander in Chief of His Majesty's Ships
at Portsmouth & Spithead.

President

Capt^l Rob^t Pett
Cpt^l Bridges Rooney
Jn^o Montagu
Honble A Barrington

Capt^l Roger Martin
Chas Leakey
Julian Legg
Sam^l Marshall

The Court Sworn.

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The Assurance's Officers and Crew call'd in, and every body admitts
Admiralty's Order 1st May 1753 to the Honble Rear Adm^l Roscacon,
directing him to assemble a Court Martial for enquiring into
the Cause of the Loss of His Majesty's ^{late} Ship Assurance the 24th April
last, when endeavouring to go through the Needles, the said Ship
struck in the narrow's & was lost; & into the Conduct of the Officers
& Men on the Occasion

Read

Captⁿ Scrope's Letter to the Right Honble the Lords Commrs
of the Admiralty Dated 27 April 1753 giving their Lordships
an Account of the Loss of His Majesty's Ship Assurance on
the 24 April

President, Captain Scrope have you any Complaint to make against
any of the Officers or Company for Neglect of Duty, disobedience
to Command, or being any ways Instrumental or Contribut^l towards
the Loss of the Assurance

No Sir they all did their duty & behaved as they ought
Pres Then how came the Ship to be lost.

I imagine it must be by the Course in which the Master was
mistaken

P. Did the Master willingly take Charge of the Ship or was it forced
upon him

He undertook it willingly

P. Ma^t you hear what the Captain says. As to your willing taking
Charge of the Ship

I did Sir

Now had you the Wind

W. Sir or told so

And how came you then to loose the Ship

I can but ill Account for it. I thought we were in a fair way
having allam way open with the Needle Rock when the Man
at the Lead call'd just before the Ship Struck, & I call'd to
the Man to heave another cast quick, before he could do so the Ship
Struck.

^{you} Do remember what course you steer'd

N E by E by Compass

what Sail had you aboard

All out but Shuddersails

Were your Tacks aboard

Your Tack at Cat-head

Did the Ship go ashore with all Sails full

Yes Sir

Had you ever Charge of a Ship through the Needles
before

No I have been in and out often, but never had charge
of a Ship

Where was it the Ship Struck

As near as I can judge about a cables length about W or
N W from the Needle Rock

How came you to hap so near the Needle Rock where the
Channel is so wide and you had the wind so large

At the latter End of the Eb, I was afraid of the Shingles
which ^{the} Eb tide set us directly upon, and they appeared so
high out of the water, that I concluded they had shifted
near the Island, as they will do sometimes

How did the Island bear of you at 4 in the Morning

N. Nath Point N E by N the Needles N E by E about

What Distance was you from S. Mathewes point

Six or Seven Leagues

Was your Logg Saved

46.

I cannot hear that it was, Capt. Seroope says no notice of it was put into the Logg —

Capt. Seroope what distance do you think you was from the Westernmost of the Needle Rocks when the Ship Struck

About a cables length I guess

How did the Center needle point bear of you when you was about a League from it —

N.E.

Now you say at 4 P.M. when the Capt. Asked you if you would carry the ship thro' St. Math's Point, bearing at the distance N.E. & the distance about 4 leagues and the Needle Point N.E. what course did you make

Directly for the Needle Point, the breeze hasting us to the Westward As you was abreast of the Needles & the wind large why did you not go round the Island

I thought we should come sooner to Spitham
Did you take charge of the Ship cheerfully or was you forced to do it.

Quite cheerfully I never was in better spirits
Did you know there was a Rock so near the Needles as that you struck upon,

I did not know any thing of a Rock so far off & few people did.

Pres. would you have any of the Officers call'd in your justification

No, there are three Pilots aboard who know those rocks well, I should be glad they were Exam'd.

Roger Parkman of Lowestoft in the Isle of Wight Pilot sworn.

11 How long have you been a Pilot

23 Years I have Piloted Men of War & Merchant
Men.

What was the largest Ship of War you ever had charge
thro' the Needles -

The Preston of 50 Guns
have you been down where the Ship struck when the
accident happened

No I have been where she now lies, but was never when
she received her first wound nor never had a notion
of a Rock so far off.

Had you been Pilot of the Ship with the Wind so large
could you have carried the Ship so near the Needles.

No I would have kept farther to the seaward because there
is a strong counter side which would deceive any man
breathing.

Did you not reckon the best of the Water was near the
chalk Rocks rather than the Shingles

Yes, for I never know less than 3 fathoms shall
Am look of Quoes in the Isle of Wight Pilot soon.

Have you carried Ships of war thro' the Needles.

Yes

What was the largest

The Larke Capt Crookshanks & the Inverness Capt Legge

Do you know where the Assurance first struck

No

Did you know of any Rocks laying in a fables length

from the Needles

18

No

Step^r Burridge of Dover in the Isle of Wight Pilot Sloop
Have you been down at the Needles since the Assurance was
lost

No

How long have you been a Pilot

Twenty Years have I carried Ships & Vessels thro' the Needles
to Holland

Do you know of any Rock that lies N. by E. or N. N. E. of the
Westmost of the Needles

No

Have you any thing more to say in your defence to clear
up from the heavy Charge you lay under of losing the Assurance

No I pray the Captain & Officers might be asked as to my Character
Capt^r Croft what Character do you give the Master

I have ever found him a very ^{when} careful diligent Officer
Mr Richard First Lieut of His Majesty's late Ship Assurance
called in and sworn

How long has the Master belonged to the Ship

About a Year & half

How has he behaved Sir that time

Like a careful sober diligent Officer, & in my humble Opinion
very capable of the Charge of such a Ship

Sir please to inform the Court how far you judge the Ship might be
from the Needles when she struck

About a fables length

19 How long might it be after she struck before she made water
About an hour to the best of my remembrance —
Did she stop at once on striking

Yes only five round with her head to the N^oward
In^r Gardiner 2^d Lieut^t of the Assurance sworn

How long have you been Lieut^t of the Assurance
Six months

Give the Court your Opinion of the Master

I always looked upon him as a very capable diligent
Man

What distance was the ship from the Needle point, when
she struck

About a cables length.

Have you been through the Needles before in any other
Ship

Twice

John Somerset, 3^d Lieut^t Sworn

Tell the Court your Observations of the Masters Conduct & your
Opinion of him

He always behaved soberly & I look'd upon him
as a diligent good Officer —

What distance do you think the Ship struck from the Needle
point

I judge about a cables length.

Then the Court was cleared & the President put the
following Questions

President Is it your Opinion that Capt^t Soper was at all a casualty
to the Loss of the Assurance

No Unanimously

80

It is your Opinion that the Lieut^s were at all necessary to the loss of the said Ship

No Unanimously

It is your Opinion that the rest of the Officers & Crew were at all necessary.

No Unanimously

It is your Opinion that the loss of the Ship was owing to the unskillfulness negligence or carelessness of the Master.

No we dont attribute the loss to the negligence or carelessness of the Master but we attribute it to his Ignorance of the Rock the Ship ran upon, which is generally said to be little known.

What Article does the Master fall under -

Under part of the 26 Article by running the Ship unskillfully upon that Rock.

What punishment do you reward him

In regard to the general good Character of the Mas^r. The Court are Unanimously of Opinion that he be imprisoned three months in the Marshalsea.

Pittmouth Dock 12th April 1753

Sir

I herewith enclose you the Sentence & proceedings of a Court Martial, held yesterday, on board His Majesty's Ship Tygar in this Harbour for enquiring into the Cause of the Loss of His Majesty's Ship Assurance & am

Sir

In Cleland Esq^r

Your most Obed^t. Humble serv^t

P. A.

8th June^o

Portsmouth Dock 9 May 1753

The Honble Rear Adm^l Boscawen being come down here with Orders, from the Right Honble the Lords Commissioners of the Admiralty, to assemble a Court Martial to enquire into the Cause of the loss of His Ship Assurance & the Conduct of the several Officers & Men upon that Occasion, I am to acquaint you that the Signal for the said Court Martial will be made Friday morning next by 9 O'clock on board His Majesty's Ship Cygnet in this Harbour, to which you are not to fail to appear, and let as many of the Crew of the said Ship know it, as you can meet with, that they may likewise appear I am

Gent^l

To the Lieut^{nt} Master Your most humble serv^t
Other Officers of His Ship G. A.
Assurance D. J. A.

Sir

Date as Above

The Honble Rear Admiral Boscawen being come down here with orders, from the Right Honble the Lords Commissioners of the Admiralty, to assemble a Court Martial to enquire into the Cause of the loss of His Majesty's Ship Assurance on the 24th April last, & the Conduct of the several Officers, and Men upon that occasion, I am to acquaint you that the Signal for said Court Martial will be made Friday morning next at 9 O'clock on board His Majesty's Ship Cygnet in this Harbour, where you are not to fail to appear, & let as many of your Officers and Crew as you can meet with know it, that they may likewise appear I am Sir

To Captⁿ John Scope of
His Ship Assurance

Your most humble serv^t
G. A.
D. J. A.

At a Court Martial held on board His Ship Tiger in Port
Harbour 11 May 1753 Vizt -

Present,

The Honble Edw Boscawen Esq. Rear Adm of the White Squadron
of his Majesty's Fleet and Commander in Chief of His Majesty's
Ships at Portsmouth & Spithead

Presidents,

Capt^m Rob^t Pitt

Capt^m Bridges Rodney

Mr Montague

Hon^{ble} Sam^l Barrington

Capt^m Roger Martin

Thos Lathford

Julian Legg

Sam^l Marshall

The Court pursuant to an Order from the Right Honble the Lords
Commissioners of the Admiralty to the Honble Edw Boscawen Esq dated
1st Inst (vizt) proceeded to enquire into the Cause of the Loss of His
Ship Assurance the 24 April last when endeavouring to go
through the ^{narrows she struck on the} Narrows and was lost.

Capt^m Scrope declared that when he proposed to carry the Ship thro
the Narrows the Master willingly accepted that Charge which
the Master acknowledged. & none of the other Officers or Crew
having any Charge laid to them of having been any way
necessary to the Loss of the said Ship. Therefore the Court do unani-
mously acquit Capt^m Scrope & all the other Officers (except the
Master) & the Crew of the Loss of the said Ship Assurance
as above. But as to the Master, the Court are unanimously of
Opinion that his Ignorance of that particular Rock, on which
the Ship struck, which Rock is represented to the Court by three
Pilots, as a Rock unknown, the Court are unanimously of Opinion
that the said Master Wm Patterson falls under path of the 26
Article of an Act of the 22 of our most gracious Sovereign
King George the 2 And in Consideration of the Obscurity of the

Rock, and the general good Character of the said Master do
adjudge him the said David Patterson to be Imprisoned only
three months in the Marshalsea prison, & it is hereby directed
that he be so Imprisoned accordingly.

were unanimously of Opinion that David Patterson the
Master of the said Ship Assurance was the sole cause of the
Loss of the said Ship, by conducting and Steering her on the
Rock, call'd the Needles & therefore that he the said David
Patterson falls under part of the 26 Article of an Act of the
22^d of our most gracious Sovereign King George the 2^d the
Court do adjudge him

As for the Captain the Lieutenants & all the other
Officers & Crew of the said Ship Assurance, it appears that
they used their best Endeavours to have got the Ship off again
& to have recovered & preserved her, wherefore the Court do
acquitt all and every one of them & they are hereby Acquitted
accordingly.?

Resolution Spoken 20th Oct^r 1775

They are to certify whom it may concern That Mr.
Thomas Beustea officiated as Judge Advocate at a Court
Martial assembled by me onboard His Majesty's Ship Royal
Oak in Portsmouth Harbour for the Trial of Jⁿ Hart, Seaman
of the said Ship for Disobedience, from Her, that he pro-
visionaries for the Court and that he was Employed in
preparing and assisting at and in and in Matters relating to the
said trial Ten days that is to say from the tenth to the 21st day
of October 1775 Given under my hand—

Resolution Spithhead 30 January 1776 85.

Then are to certify whom it may concern That Mr Tho Bunters
affiliated as Judge Advocate at 3 Several Courts Martials assembled
by me onboard His Majesty's Ship Warfleur in Portsmouth
Harbour the first for the Trial of Capt Geary Gardiner Master of
His Majesty's Ship Boreas for his conduct respecting the Accident
the Boreas put with in turning down to St. Helen's whilst she
was in his Charge, The second for the Trial of John Nicholls
Siceman of the Boreas for Desertion from her & also for Stealing
Cloathes & the 3 for the Trial of Pat Weyman Marine of the Arctura
for the Murder of En Twigger Marine of the same Ship That
the said Tho Bunters provided Stationaries for the Courts and that
he was employed in preparing for assisting at & in matters
relative to the said Trials from the 30th of Decem. last to this 30 day
of January 1776 Given under my hand.

Warfleur Portsmouth Harbour 10 Mar 1776

Then are to certify whom it may concern That Mr Tho
Bunters affiliated as Judge Advocate at a Court Martial assem^d
by me onboard His Majesty's Ship Warfleur in Portsmouth Harb^r
for the Trial of En Weyman a Seaman of His Majesty's Ship Centurion
for having absented himself from the King's Service & for striking
one of the Petty Officers of the said ship Centurion That the said Tho.
provided Stationaries for the Court & that he was Employed in preparing
for assisting at in matters relative to the said Trial 10 Days that
is to say from the 28 of Feb^r to this 10 day of March 1776 Given under
my hand.

Barfleur Ports Harbour 16 April 1776

These are to certify whom it may concern That Mr Tho^s Winsted officiated as Judge Advocate at 2 several Courts Martial^s assembled by me onboard His Majesty's Ship Marlborough in this Harbour the first for the Trial of Wmth Mearns of His Majesty's Ship Emerald for selling Liquor to the Ship's Company & the 2^d for the Trial of Wth Charles Shurtlworth a Lieut^t of Marines & a Marine Officer onboard His Majesty's Ship Minerva on a charge of leaving his Duty onboard the said Ship at Antigua & coming to England without leave That the said Tho^s Winsted provided Stationaries for the Courts & that he was Employed in preparing for writing at & in matters relative to the said Trials from the 16 March to this 6 day of April 1776 Given under my hand.

Barfleur Ports Harbour 1 May 1776

These are to certify whom it may concern That Mr Tho^s Winsted officiated as Judge Advocate at 2 several Courts Martial^s the first assembled by me onboard His Majesty's Ship Marlborough at Antigua for the Trial of Wmth Phillips Seaman of the said Ship Marlborough for Desertion from her & the 2^d by me onboard His Majesty's Ship Egmont in Ports Harbour for the Trial of Wmth Hall of His Majesty's Ship Emerald for having behaved in a scandalous & mutinous M^r. That the said Winsted provided Stationaries for the said Courts & that he was employed in preparing for writing at and in matters relative to the said Trials from the 10 April last to this 1 May 1776 Given under my hand —

Admiralty Office 14 May 1753 86

Sir/

I have received and read to my Lord Commissioners
of the Admiralty your Letter of the 12th Ins.^{ts} inclosing the Sentence
and proceedings of the Court-Martial for enquiring into
the cause of the loss of His Majesty's late Ship the Assurance
I am

Sir

W^m Allen Clerk of the Court Your very humble serv^t.
Portsmouth & H. Cleveland

Sir/

I have communicated to Mr Cleveland the Representation
contained in your Letter of the 2^d - He believes that ten Days
for each Court-Martial will be deemed by the Board a reasonable
allowance; and therefore, upon your transmitting Certificates
accordingly from the Presidents of the Courts-Martial at which you
may attend, Orders will, I make no doubt, be given to the Navy
Board for paying you for that N^o of days.

I am much obliged to you for the civil Offer of your
Services at Portsmouth. I have nothing at present to trouble
you with, and have therefore only to assure you, that your applica-
tion here shall meet with all the dispatch that can be given

them by

Sir

Your most obed^t Serv^t.

Chas. Pearce.

Admiralty Office

29 April 1753.

Admiralty Office 16th August 1766

Sir/

I received yours inclosing Two Certificates of your
 Officiating as Judge Advocate at Two Courts Martial, which
 are ordered for Payment; and am to acquaint you, that
 you are to be allowed Ten Days for Each.

I am

Sir

To Mr Alex Fowler

Your most humble Serv^t

Royal Arm
 Smiths

Cleveland

Sir,

I am favoured with yours of the 4th Instant, in regard to
 the Courts Martial having Cognizance of Crimes committed by
 Persons belonging to Ships in Ordinary.

As the Act of Parliament expressly extends to Persons (with
 out exception) in Actual Service and full Pay; and as persons
 belonging to Ships in Ordinary are undoubtedly under both those
 circumstances; Courts Martial appear to be fully empowered
 thereby to take Cognizance of Crimes committed by such Persons.

But as Precedent of this Jurisdiction having been Erased,
 must undoubtedly be more satisfactory than any Opinion of mine
 in this matter, I shall therefore only add, that some time between
 the two last Wars, I attended a Court Martial at Chatham, where
 2 or 3 Warrant Officers of Ships in Ordinary at Woolwich were
 ordered by the Admiralty to be tried and they were tried
 accordingly.

As to Payment for your attendance at the Court, Martial upon⁸⁸
the Panther's People, I don't apprehend the Lords to be disposed to
grant bidders in such cases, unless the particular Days are express'd
in the President's Certificate: But if there is any thing Extraordi-
nary in the present Case, you should state it to Mr. Stephens, to be
Laid before the Lords. As to Stationary War, I believe no allowance
for it has been hitherto made to any one acting as Judge Advocate

I am

8 Aug^r 1765 Sir

Your most obed^t Servant

As I am not well
enough to attend the Office
at present I write this at
my House.

John Tarn, Judge of the Fleet

Sir

Dorsetshire Prison Harbour Aug^r 12th
1765

We the Undermentioned Captains of His Majesty's Ships
at Portsmouth who were to compose a Court Martial for the
Trial of Alex^r Cockburne having previous to the Trial taken
into Consideration the Order from their Lordships, we desire you
will represent to their Lordships, that from the Nature of the present
Case being that of a Warrant Officer of the Centaur a Ship in
Ordinary, we entertain great doubts whether as the Ships in Ordinary
are under the immediate direction of the Commissioners of the Dock
Yards, and have never been generally Esteem'd, to be liable to Martial
Law, nor the directions of the Military Officers, we when assembled
as a Court, shall have Jurisdiction over the Prisoner, We make it therefore
our humble request, that their Lordships would be pleas'd, if they
approve

82
approve thereof, to direct the Opinion of the King's Councils,
to be taken on the full circumstances of the case, for our Guidance
on the present Occasion, We are

Sir

Your most humble servants

Rob^t Hughes

Jⁿ Montagu

R^a Hughes Jun^r.

Rob^t Lathorn

W^m Bennett

Philip Tuford, Clerical

W^m Campbell

Jⁿ Luttrell

Cornwall in Hamoze 27 October 1765

Sir

We please to acquaint their Lordships that in Obedience
to their Order of the 10th Instant directing the Captains of His Majesty's
Ships & Vessels at Plymouth next in Command to Captain
Lloyd of the Ramo, to Assemble a Court-Martial for the Trial
of W^m Shane a Deserter from His Majesty's Ship (Ramo) trans-
mitted to me by Lord Edgecumbe, I made the signal for Assembling a
Court-Martial onboard His Majesty's Ship under my Command
on Saturday 26th Instant, but found it impossible to form a Court
for proceeding to trial; from the following reasons viz.

There being nine of His Majesty's Ships in Commission
at this Port, none of whose Captains are absent upon leave,
And the Act directing "no Court-Martial held by virtue of
said Act, shall consist of more than 13, & less than 5 Persons,

90
to be composed of "such Flag Officers, Captains, or Commanders, then
and there present, as are next in Seniority" to the Officer who
presides at the Court Martial

Five Captains only did assemble of the Ships then and there
in Commission, so that three were absent, ill health preventing
their Attendance. It was doubted, whether the Act does allow, to
dispense on any Account whatever, with the absence of any of the
Captains or Commanders then and there present, as are next in
Seniority to the Officer who presides at the Court Martial, according to the
Words of the said Act. I therefore beg you will be pleased to
signify his Majesty's Difficulty to their Lordships, that Opinion may be had
whether the said Act does allow of the absence of any such Captains,
and if it does allow of any such Absence, under what Circumstances,
and the Proofs that are necessary to justify the legal proceedings
of a Court. I have communicated this Difficulty to Lord Egmont,
who has directed me to apply to their Lordships; And as I myself differ
in Opinion from Captains — & — who are the Gentlemen
who raised the difficulty, I shall continue to make the signal and
make my attendance from Day to Day, untill the absent Senior
Captains are able to attend, or I receive their Lordships Directions,
by which their Lordships will see that I am no ways deficient in
my Duty

I am with Respect

Sir

Philip Stephens Esq. Your most obed^t. Serv^t

Adm^t.

Geo Mackenzie

Opinion...

It appears to have been the Intention of the Legislature by the Act of the 22 of George the 2^d, that every Court Martial should be composed if possible, of Senior Officers; but tho' the Words of the Statute are that no Court Martial shall consist of more than 13 or less than 5, & that to be composed of such Officers as are next in Seniority to the Officer who presides; they can never I think be understood to mean that the next in Seniority to the President, who happen to be present on the same Station with their Ships should all attend in Order at all Courts, & notwithstanding any impediment whatever, or otherwise, that no legal Court can be held, for such a Construction, seems not only to be unreasonable, as well as detrimental to his Majesty's Service by rendering it extremely difficult to make a Court, but also to be very contrary to the general Tenor of other Parts of the Act, which appear calculated to expedite Justice, as much as possible, by permitting five Captains to constitute a Court, & even by allowing Commanders to assist, where a sufficient number of Post Captains is not to be found.

I said also above, that every Court Martial has an discretionary Power by the 13th Section of the Statute to dispense with the presence of any Member & suffer him to go on shore (in case of illness) when after a Trial is begun, there seems to be no reason to doubt but that any Officer may be excused from attendance by the President and Court, if a just Reason is assigned before a Trial is begun; and that they may afterwards proceed to Business, if the Remaining Number of qualified Officers is

sufficient to constitute a Court-Martial. I therefore apprehend
that Mr. Macheuzie, & the five other Captains, may legally assemble
and proceed as a Court-Martial to try William Shaw if it is stated
down in the Minutes, that the Absent & Senior Captains have
certified the President by Letter, or otherwise, of their inability to
attend through ill health.

Geo Harris

D^{rs} Comm^{rs}: November 4th 1765

(Copy)

Memorandum for the President. When the Court is sworn
and the Admiralty Order Read, bid the Judge Advocate swear
& examine the Witnesses singly, and send the Members of the
Court to let the Judge Advocate go through examining each Wit-
ness & intimate their own Questions which they would ask & not ask
then tell the Judge Advocate has done which will save time.

Lieut^t Miller of the Torbay will be first called & sworn then
Mr Russell Clerk of the Chequer, Colk & the other Witnesses.

If any debate or dispute should arise, the Court to be cleared that
the Opinion of the Members may not be publicly known.

when all the Witnesses are examined, clear the Court of
the Question whether the Charge has been fully or in part proved
against all or which of the Prisoners, & ask the Opinions of the
Members beginning with the Sen^r Captain first. The President gives
his own Opinion Last, then ask (if found guilty) what punishment

93) The Court will adjourn after which the Judge Advocate draws the Sentence & the Court being opened again he pronounces it.

Memorandums for Court Martial.

all this in Surar all the members together pursuant to the Statute
then Court. 1. Advocate to be sworn.

when the
Pris^{rs} &
Evidence
are present } I don't Order for assembling Court Martial Read.
The Informations or Letters of Complaint to the Court read.

Witnesses all except the first to be ex^d ordered to withdraw,

Witness's Oath

The Evidence you shall give to the Court upon the matters in Question between our Sovereign Lord the King & the Prisoners now to be tried shall be the Truth, the whole Truth & nothing but the Truth, so help you God.

Here follows the Evidence viz^t.

For the King

A. B. &c. being sworn and Examined on his oath saith
I know &c.

To each Witness with the Prisoner will you ask the following
Question - when the Evidence for the Crown is rested -
Ask the Prisoners what they have to say in their Defence & if
can produce their witnesses -

And when they have done clear the Court & let every body be
ordered to withdraw. -

Then put these Questions viz^t

Has the Charge been fully proved or not?

A. Yes or No — or as the matter is —

What Article or Articles do the President fall under — (94)

A. what Punishment doth the Court award them

A. Then open the Court & let the Prisoners be brought in to hear the Sentence—

Portsmouth 4 January 8/89.

Sir,

Captain Thompson Commander of His Majesty's Ship Edgar being directed by their Lordships to assemble a Court Martial for the Trial of Mr Chas Thachery, Lieut of His Majesty's Ship Thoon on several Charges represented in a Letter from Captain W. Taylor her Commander to you, and among others "for going into the Captains Cabin, when alone at sea calling him Scoundrel and Liar" — Which Captain Taylor can alone prove, and as Captain Thompson apprehends that the Court may have a Doubt of the Propriety of admitting Captain Taylor to give his Evidence, because he is the complainant, he has directed me to state the Case to you and to request you to move their Lordships to lay the same before such Council as they shall think proper for an Opinion on the following Questions;

Whether Captain Taylor's Evidence under the abovementioned Circumstances ought to be admitted or not? and if it ought to be admitted;

Whether after he has been examined, as it is the Custom of Courts Martial to Examine the Witnesses separately and apart from each other, he can be permitted to remain in the Court to Conduct the Prosecution?

95 Captain Thompson means to assemble the Court Mar.
on Monday Morning next and hopes to be favoured with
an Answer before that time I am with great respect

Sir
Philip Stephens Esq. Your most obed^t Serv^t

M. G. J. M.

The Distinction between objections to the Competency
and Objections to the Credit of a Witness has been long
established; and in criminal prosecution it is not a
legal Objection to the Competency of a Witness, or to the Admissi-
bility of his Evidence, that his the Prosecutor, whatever
objection to his Credit may arise under the circumstances
of the case.

The Effect of the Evidence when admitted, and the
Mode of conducting the Prosecution must be left to the
Judgement of the Court. If the Practice of Courts Martial
in examining the Witnesses separately is so universal that
it cannot be dispensed with in any case, I suppose that
some Agent or Attorney on behalf of the Prosecutor may
conduct the Prosecution which is every day's Practice in
Courts of Law.

If any Doubt should be conceived by the Judges of
the Court on the propriety of receiving the Evidence of a
Complainant, it may be proper to observe that the Rule,
which is universal in civil Actions, that a Plaintiff cannot
be admitted as a witness in his own Cause, does not apply

to criminal Prosecutions, which are always supposed to be at the (96)
Suit of the Crown, and on the behalf of the public; and therefore Objections
from Interest, or from want of other Evidence or Circumstances to confirm
the Testimony of a single Witness, are objections only to the credit.

T. C. East

(A Copy)

Lincoln's Inn January 10th 1789

Admiralty Office 10th January 1789

Sir

Having communicated to my Lord Commissioners
of the Admiralty your Letter of the 11th Instant, informing
them that Captain Thompson who is ordered to a general court
Martial for the Trial of Lieut. Thackeray of the *Thorn* *Block*, is
apprehensive the Court may have a doubt of the propriety of
admitting Captain Taylor to give his Evidence, being the Com-
plainant, and therefore requesting Council's Opinion upon the
Questions therein proposed; I am commanded by their Lordships
to send you herewith a Copy of the Opinion of Mr East, Council
for the affairs of the Admiralty and Navy, upon a case which
has been laid before him on the Subject above mentioned.

And am

Sir

Your very humble servt.

Philip Stephens

W Greatham at Portsmouth

Portsmouth 24th October 1790

Sir

Doubts having arisen in the minds of several of the Flag Officers and Senior Captains at this Port, whether a Court-Martial assembled in the manner, the last was, is legal, owing to Sir Roger Curtis's sitting as a Member thereof as first Captain to the Commander in Chief in preference to many Captains present, who are Senior to him on the List — I am directed by the Honble Admiral Harrington to request the Lords Commissioners of the Admiralty to state the case to the Crown Lawyers for their opinion upon the Legality.

The Act of Parliament directs that the Court shall be composed of such Flag Officers Captains or Commanders then and there present as are next in Seniority to the Officer who presides at the Court-Martial —

The third Article of the Instructions under the Act, of Rank and Command says that the first Captain to the Commander in Chief shall be seated in a Rear Adm^l. & take place at Councils of War and Court-Martial next to the Junior Rear Admiral

It is understood by them when these Instructions were framed, that the Person who filled the Office of first Captain to the Commander in Chief was in all cases the senior Captain on the List. I am,

Sir

Philip Stephens Esq^r

Your most obed^t Serv^t
M. G. Dan^r

Portsmouth 29th October 1790 (98)

Sir

Having Written to Mr Stevens by your direction to request that the Lords Commrs^{rs} of the Admiralty would be pleased to State the case to their crown Lawyers whether it was legal for the first Captain to the Commander in Chief to sit at Courts Martial as a member in preference to several senior Officers in the List. I beg Leave to inform you that I wrote to Mr Stephens accordingly, and this morning received a Letter from him acquainting me that having laid my Letter before their Lordships, they had sent it to Mr Dyson their Solicitor, and directed him to lay a case before the said Council for their Opinion thereupon accord^g I have the Honor to be

Sir

Your most obed^t Servant
The Honble Adm^l Barrington

M. G. J.

Admiralty Office 29th October 1790

Sir

Having laid before my Lords Commissioners of the Admiralty your Letter of the 24th instant, representing that doubts had arisen in the minds of several of the Flag Officers and Senior Captains at Portsmouth, whether a Court Martial in which the first Captain to the

99/
Commander in Chief sits as a Member, in presence
to many Captains on the Spot who are Senior to him
on the List is legal, and requesting, by desire of the Honble
Adm^l Barrington that the Case might be stated to the Honble
Lawyers for their Opinion, as to the legality of such a
Court Martial, I am commanded by their Lordships
to acquaint you that they have sent your said letter
to Mr Wynne their Solicitor, and directed him to lay a
Case before the said Council for their Opinion thereupon
accordingly. I am

Sir

Your very humble servant

Wm Gueltham Jun^r at P^{ts}. Philip Stephens

Royal William Spithhead

11 Decr 1790

Sir

Having in Obedience to their Lordships Order of
the 19th Nov^r last summoned a Court Martial to proceed on
the Trial of Alex Gordon Boatman of His Majestys Fore-
ship Plate for embezzl^g of part of her Stores, and the Judge
Advocate having informed the Flag Officers & Captains met
this day for that purpose, that he had by direction of
the Honble Adm^l Barrington written a letter to you on
the 24th October last, to request their Lordships to cause a
Case to be stated to the Crown Lawyers whether it was legal
for Sir Roger Curtis as the first Captain to the Commander
in Chief to compose a part of the Court and that he had not

yet received any Answer to the Case by Counsel the (100)
Flag Officers and Captains assembled were of Opinion that
it was improper to proceed on the Trial till such Answers
shall be received

I am also desired to inform their Lordships that
further doubts have arisen among the Officers, whether as
the Commander in Chief's Flag is not now Flying, it is legal
for the first Captain of the Ship on board which such flag
was last flying / being one of the Officers assembled / to compose
Part of the Court.

I am
Sir

Your most obed^t serv^t
Philip Stephens Esq^r J. Elliott

Copy /

The Lords Commissioners of the Admiralty
having directed this Case to be laid before
His Majesty's Advocate, Att^y & Sol^r Gen^l
& the Advocate & Council for the
Affairs of the Admiralty & Navy
for their joint opinion.

1st Whether the third Article in the printed Instructi-
ons so confirmed by the Order in Council as before
mentioned, vested in First Captains a preferable right
to sit at Courts Martials, in Exclusion of Captains Senior
on the

on the List, or only gave them Rank & Place at such Courts, when their Seniority as Captains entitled them to sit there?

2^{dly} Supposing the said Article to have vested First Capt^{ns} with a preferable right to sit, in Exclusion of Capt^{ns} Senior to them. Then Whether, much of the said Article is gave them that Right, was not annulled or controuled by the Words in the 12th Section of the Act, before mentioned which directs, that Courts Martial shall be composed of such Field Officers, Captains or Commanders then and there present as are next in Seniority to the Officer who presides &c. not least so far annulled or controuled, as to render it necessary for the first Captain to be otherwise entitled to sit, asking one of such Captains next in Seniority?

And upon the whole whether Sr. Roger Ker was legally intitled to sit as a Member of the said Court Mar^l, so held on Suit^l as high as aforesaid.

We are of Opinion that the third Article in the Printed Instructions, confirmed by the Order in Council, vested in first Captains a preferable right to sit at Courts Mar^l in Exclusion of Captains Senior on the List, and not merely a Rank & Place at such Courts, when their Seniority intitled them to sit.

We are of Opinion that the Right of such Captains secured by the said third Article, was annulled by the

by the words in the twelfth Section of the Statute, so as to¹⁰²
disable them from sitting at Courts Martial where their
Seniority would not intitle them to sit.

We are consequently of Opinion that Sir Roger Curtis
was not legally entitled to sit as a Member of the Court
Martial held on Lieut^r B. B. Light

Wm Scott
A. McDonald

Jr^r Scott

Thos. Bower

F. B. Lust.

December 11th 1790

" Having considered the Kings Instructions, and the
" Act of 22: George 2: 6: 33: and the usage which has obtained
" since that act passed, we are of opinion that the first
" Captain to the Commander in Chief, when a Member of the
" Court Martial according to that Act has a right to take
" place next to the Senior Rear Admiral, and to vote
" according to that Rank.

Wm Scott

A. McDonald

J. Scott

F. B. Lust.

July 14th 1791

H
Royal William 11 July 1791

You will be pleased to inform the said Commrs. of the Admiralty that pursuant to their Lordships Orders, The Flag Officers and Captains this morning assembled on board the said Ship for the composing a Court Martial for the Trial of Tho Jones a Seaman belonging to the King's Sloop Speedy on the charges therein mentioned but a doubt having arisen in the Minds of several members whether Sir Hyde Parker (who comes within the Number of Persons directed by the Act of Parliament to compose the Court) should take his Seat at the Court next the Junior Rear Admiral under the directions of the third Article in the Naval Instructions as first Captain to the Command in Chief in Preference to Captains who will also compose part of the Court & who are senior to him on the List or whether he should take his seat as a Captain according to his Seniority on the List I am requested to desire their Lordships will be pleased to order their Solicitor to state the case for the Opinion of such Council as they shall think proper on the Questions hereunder written—

1st Whether Sir Hyde Parker as the first Captain to command any 20 Sail of the Line & upwards a Commander in Chief being by his Seniority on the List of Captains within the Number of Persons directed by the 12th Section of the Act of 22 Geo 2 to compose the Court, has a right to take place at Courts Martial next the junior Rear Admiral, in preference to Captains senior to him on the List, pursuant to the

3 Article of the Naval Instructions, under the Title of Rank and Command.

2^d Supposing Sir Hyde Parker as first Captain to such Commander in Chief should be admitted to take place next to the Junior Rear Admiral whether or not his vote being given in that place when there are two Captains who are sitting Junior to him on the List is consistent with the 4 Article of the Naval Instructions under the title of Court Martial which directs that the Youngest Member shall vote first proceeding in Order up to the President and whether or not a Sentence being given in such case may not subject the Members of the Court to be called only a Superior Court of Law for Illegality in their Proceedings —

Opinion of the twelve Judges on the Court Martial of Captain Coffin which dismissed him, his Ship, Captⁿ Coffin was afterwards struck off the List by the first Lord of the Admiralty.

To the Kings most Excellent Majesty

May it please your Majesty In obedience to the Order of your Majesty in Council, we have taken into consideration the Charge exhibited against Isaac Coffin Esq^r The Sentence of the Court Martial, and also the Resolution of the late Board of Admiralty thereupon, and we are of opinion that the said Sentence is illegal in that the Punishment directed to be inflicted by an Act of the 23^d of the Reign of His

late Majesty, King George, 2^d, Chap: 33, upon
Persons convicted of the offence specified in the 31st
Article of war established by the said Act, cannot
be inflicted, or Judgement thereupon be pronounced
or supplied by any other authority, than of the Court
Martial which tried the Offence

(Signed) Kenyon

Arrivals

Sept^r

- * Seahorse —
 + Jalouse & Conway. 17th
 * Spider — do — 21st
 * Moziana — 24th
 * Jalouse — 24th
 * Ambuscade — 28th
 Moziana for back — 4 Oct^r
 Merlin & Conway. 6th "
 * Hirondelle — 6th "
 * Spider & Conway — 8th
 Seahorse — 9th
 * Ventura — 10th
 * Afteral. Russi. = 14th
 Insolent — 15th

- Lively — 30th
 Ambuscade — 31st
 Insolent — 2^d Nov^r
 Renommie }
 Aurora }
 L'Inimable }
 3

Conway

Sailings.

Sept^r

- Seahorse — 30th Sept^r
 Jalouse — 22^d
 Spider — 22^d
 Moziana — 30th
 Jalouse & Conway — 1st Oct^r
 Ambuscade — 8th
 Hirondelle — 9th

- Afteral. Russian Frigate 15th
 Lively — 17th

Russian Brig. 31stSeahorse — 4th

- Lively
 Aurora
 Ambuscade
 Insolent - went back
 Moziana
 Hirondelle
 4

16th The Embargo - laid. Spider sail'd to cruise & enforced it.

Arrivals

Departures

Sailings

(107)